



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 39 OF 1993**

**IN THE MATTER OF THE ESTATE OF GITHUA NDARUA DECEASED**

**AND**

**GRACE MUMBI NDERITU .....PETITIONER**

**VERSUS**

**DORCAS WAKURAYA GITHUA .....OBJECTOR**

**JUDGMENT**

Grace Mumbi Ndiritu , hereinafter referred to as the Objector applied for the revocation of the grant issued to Dorcas Wakuraya Githua, hereinafter referred to as the Petitioner. The Objector filed an affidavit she swore in support of the summons. The Petitioner swore a replying affidavit to oppose the summons. This court directed for the summons for revocation of grant to be disposed of by oral evidence. The Petitioner swore a replying affidavit to oppose the summons. This court directed for the summons for revocation of grant to be disposed of by oral evidence.

When the cause came up for hearing, both the objector presented the evidence of two witnesses each. Grace Mumbi Ndiritu heavily relied on what she deponed in her affidavit in support of the summons for revocation of grant. The Objector was of the view that the grant should be revoked for two reasons: First, that the same was obtained fraudulently by the making of a false statement and by the concealment of material facts. Secondly, that the petitioner made some untrue allegation of fact essential to justify the grant. She claimed the deceased was the father of her husband Ndiritu Githua, deceased. She averred that the deceased was married to two wives i.e. Wangechi Githua and Dorcas Wakuraya Githua (petitioner). She also alleged that the deceased was the registered proprietor of the parcel of land known as L.R. No. Thegenge/Unjiru/409, which was shared by the two families. She said that the succession cause was filed without being consulted. She said the petitioner has wholly transmitted to herself the aforesaid parcel of land while she was entitled to half of it. She accused the petitioner of failing to disclose to the court that the first house was entitled to half the land. In cross-examination, the Objector admitted that she is in occupation of L.R. No. Thegenge/Unjiru/424. Both L.R. No. Thegenge/Unjiru/409 and Thegenge/Unjiru/424 measure approximately 5 acres each. She also conceded that L.R. No. Thegenge/Unjiru/424 which was registered in the name of her late husband, was transmitted to her upon the death of her husband in 1994. She claimed, she filed a complaint before the elders who ruled that half the land be given to her. John Nderitu (P.W.2) told this court that the objector's husband had bought L.R. No. Thegenge/Unjiru/424. He was of the view that L.R. No. Thegenge/Unjiru/409 should be shared in equal measure between the Petitioner and the Objector. In cross-examination P.W.2 admitted that he does not know how L.R. No. Thegenge/Unjiru/424 was acquired.

The Petitioner entirely relied on her replying affidavit when she was called upon to testify because she was too old. She averred in her replying affidavit that the deceased had given the Objector's husband his share of land intervivos leaving the L.R. No. Thegenge/Unjiru/409 for her. She stated that the aforesaid title was closed upon subdivision. The Petitioner also summoned the evidence of Wambugu Thuarika (D.W.2) who told this court that the deceased gave the Objector's husband, L.R. No. Thegenge/Unjiru/424 representing the share of first house leaving L.R. No. Thegenge/Unjiru/409 to be inherited by the Petitioner representing the second house.

At the close of evidence, learned counsels from both sides filed their submissions. From the submissions and the evidence it is clear the deceased was married to two wives. The Petitioner was the deceased's second wife while the Objector was the wife of Ndiritu Githua, a son of the deceased from his first wife. Two issues have emerged for my determination: First, is whether or not the Petitioner obtained the grant by fraud and concealment of material facts? Secondly, whether or not the deceased had given land to the first house intervivos? Let me start with the second issue. It is the Petitioner's submission that the deceased had given the first house, L.R. No. Thegenge/Unjiru/424 intervivos leaving L.R. No. Thegenge/Unjiru/409 to her house (2<sup>nd</sup> house). The aforesaid averment was made on oath but the Objector did not deem it fit to controvert the same. In her evidence in cross-examination, the objector told this court that she had L.R. No. Thegenge/Unjiru/424 transmitted to her upon the death of her husband. She was unable to explain how her husband acquired the aforesaid land. I am convinced that the deceased gave L.R. No. Thegenge/Unjiru/424 to Ndiritu Githua, deceased intervivos. The aforesaid parcel of land measures approximately 5 acres just like L.R. No. Thegenge/Unjiru/409. Under S. 42 of the Law of Succession Act, property given out during the lifetime of the deceased must be taken into account when sharing the estate. I am satisfied that the deceased had sufficiently provided for the Objector's husband during his life time hence she is not entitled to inherit L.R. No. Thegenge/Unjiru/409. In short, the deceased had given the Objector's husband L.R. No. Thegenge/Unjiru/424. The Petitioner was therefore not bound to give the Objector L.R. No. Thegenge/Unjiru/409 which was the entitlement of her house. My finding herein disposes of the first issue.

In the end I see no merit in the summons for revocation of grant. It is dismissed. I direct that each party meets her own costs.

Dated and delivered this 25<sup>th</sup> day of February 2011.

**J.K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Mugo for the Respondent N/A for the Applicant.

**J.K. SERGON**  
**JUDGE**