



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI**

SUCCESSION CAUSE NO. 204 OF 2005

**IN THE ESTATE OF DAVID MATHINI WAMBUGU alias MATHINI S/O
WAMBUGU.....DECEASED**

AND

SIMON RUBIA MATHINI.....PETITIONER

RULING

The subject matter of this ruling is the summons for revocation grant dated 9th March 2009 in which Cecilian Wambui, the applicant herein, sought to have the confirmed grant issued to Simon Rubia Mathini revoked or annulled on the following grounds:

1. ***That the certificate of confirmation issued in this cause was obtained by the making of a false statement and by the concealment from the court something material to the case.***
2. ***That the certificate of confirmation was obtained by an untrue allegation of a fact essential in point of law to justify the issuance of the same notwithstanding that the allegation was made in ignorance or inadvertently.***
3. ***That the person to whom the grant was made has failed to administer the estate of the deceased faithfully and has thus failed to proceed diligently with the administration of the estate of the deceased.***

The applicant swore two affidavits in support of the summons. Simon Rubia Mathini, the 1st Respondent herein filed a replying affidavit and that of Monica Wanja Mathini to oppose the summons. When the summons came up for interpartes hearing, learned counsels appearing in the cause recorded a consent order to have the dispute resolved by affidavit evidence and by written submissions.

I have considered grounds set out on the face of the summons and the facts deponed in the affidavits filed for and against the application. I have also considered the written submissions filed herein. The parties disputing in this cause are children of the deceased. There is no dispute that Simon Rubia Mathini,

the 1st Respondent herein filed this succession cause with the consent of the other siblings who signed the necessary consent forms. In fact he applied for the grant to be confirmed. Monica Wanja Mathini, the 3rd Respondent filed an affidavit to oppose the 1st Respondent's application for confirmation of grant. The dispute was heard and determined by Lady Justice Kasango. In her judgment delivered on 22nd October 2008, Lady Justice Kasango allowed the protest of Monica Wanja Mathini. The honourable judge proceeded to confirm the grant on condition that L.R. No. Aguthi/Gaaki/1595 would be shared as follows:

- Esther Wambui - 6 acres

- Monica Wanja - 3 acres

- Simon Rubia - 3 acres

That is the grant the applicant now seeks to be revoked and or annulled for the reasons I earlier stated in this ruling. On the first ground it is said that the 1st Respondent made a false statement and concealed material information from court. I have carefully looked at the application for issuance of grant. The applicant has deponed in her affidavit for revocation and annulments of grant that the family gave consent to the 1st Respondent to apply for the grant. The applicant claimed they were not involved in the application for confirmation of grant. In my view that allegation cannot be true. The applicant and her siblings consented. The second ground argued by the applicant is that the administrator has failed to administer the estate faithfully and diligently. The evidence on record shows that the 1st Respondent has already administered hence the allegation flies on the face of record. It would appear the applicant is unhappy with the decision of Lady Justice Kasango delivered on 22nd October 2008. She is trying to challenge the same through the summons. If well advised she should have appealed instead of engaging herself in this futile exercise.

In the end I find no merit in the application. It is dismissed with no order as to costs.

Dated and delivered this 11th day of February 2011.

J.K. SERGON

JUDGE

In open court in the presence of Kingori for the Applicant and N/A Respondent.

J.K. SERGON

JUDGE