



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 17 OF 2002

IN THE MATTER OF THE ESTATE OF JOHN KIRIMA NGUYA – DECEASED

FIELD MARSHAL MUTHONI KIRIMA.....

.....PETITIONER

VERSUS

PETER GITAHI KIRIMA.....RESPONDENT

AND

PETER MURIITHI KIRIMA.....OBJECTOR

RULING

PETER MURIITHI KIRIMA, hereinafter referred to as the Objector, has taken out the Summons for Annulment of Grant dated 15th December 2009 in which he has sought for the Certificate of Confirmation of Grant in respect of the Estate of John Kirima Nguya, deceased, given to Peter Gitahi Kirima on 11th March 2009 to be annulled. The Protestor filed an affidavit to support the summons. He also secured a further affidavit of one Field Marshall Muthoni Kirima to buttress the summons. Peter Gitahi Kirima, hereinafter referred to as the Respondent, filed a replying and a further replying affidavit to oppose the summons.

When the summons came up for hearing, learned counsels appearing in the dispute recorded a consent order to have the Summons disposed of by affidavit evidence and written submissions. I have considered the material placed before this court and the written submissions. The main issue argued in support of the summons is that the grant was confirmed giving the entire estate to Peter Gitahi Kirima (Respondent) yet the aforesaid estate was meant to be shared between Peter Gitahi Kirima (Respondent) and the Objector's late father, Michael Wamariu Kirima. The Objector stated that since he was the offspring of the Respondent's brother, he should have been included as a beneficiary. He urged this court to find the Respondent guilty of concealment of material fact.

The Respondent on his part did not deny that the late Michael Wamariu Kirima was his brother and the father of the Objector. He argued that the Objector has not shown that he is the legal representative of the Estate of Michael Wamariu Kirima deceased. He alleged that the Objector was in collusion with Field Marshal Muthoni Kirima who had previously purported to litigate on the Objector's behalf.

After anxiously considering the rival submissions, the following facts stand undisputed. First, that the Objector is a grandson of the deceased. Secondly, that the Objector's late father, Michael Wamariu

Kirima was a brother to Peter Gitahi Kirima, the Respondent. Thirdly, that the Respondent has proposed in the certificate of confirmation of grant to solely inherit the only asset of the Estate i.e. **L.R. NO. TETU/ICHAGACHIRU/667**. Fourthly, that the Estate of the late Michael Wamariu Kirima was not named as a beneficiary. Fifthly, it is also obvious that the Objector had filed an affidavit of protest, protesting the confirmation of grant. Six, that the Objector's affidavit of protest was struck out when the Objector failed to attend court on 11th March 2009. That is when the grant was also confirmed. The Respondent has also argued that the Objector being a grandson does not rank in priority as against him to succeed the Estate of John Kirima Nguya, deceased. With respect, that claim cannot lie in the mouth of the Respondent. It is quite obvious that the Objector has come to court to claim the inheritance of his late father from the Estate of his grandfather. He has specifically stated that his late father's entitlement to the Estate was not disclosed to court. There is no allegation that the Objector's late father had been given his share by the deceased *intervivos*. The fact that the Respondent did not disclose that the Estate of Michael Wamariu Kirima deceased, was entitled to inherit part of the Estate of John Kirima Nguya, deceased, is enough ground to annul the grant. The Respondent was guilty of concealment from the court of something material to the cause.

In the end I allow the Summons for Annulment of Grant dated 15th December 2009 as prayed.

Dated and delivered at Nyeri this 1st day of April 2011.

**J. K. SERGON
JUDGE**

In open court in the presence of Mr. Kimunya h/b for Muthunga for Applicant and K. Wachira for Respondent.

J.K. SERGON
JUDGE