



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 76 OF 2004**

**IN THE MATTER OF THE ESTATE OF SIMON MUTURI MUNGAI – DECEASED**

**BILHA WAHITO**

**MUTURI.....PETITIONER**

**VERSUS**

**MIRIAM NJOKI**

**MUTURI.....OBJECTOR**

**JUDGMENT**

The subject matter of this judgment is the summons for revocation of grant dated 13<sup>th</sup> July 2010 in which Esther Wanjiru Muthoga, hereinafter referred to as the Applicant, has applied for the grant issued to Bilha Wahito Muturi and confirmed on 14<sup>th</sup> May 2009 to be revoked and annulled. The summons is supported by the affidavit of the Applicant and that of Jackson Paul Muthui. The summons is opposed by Bilha Wahito Muturi, hereinafter referred to as the Petitioner by filing two affidavits. When the application came up for hearing, learned counsels appearing in this cause recorded a consent order to have the summons determined by affidavit evidence and by written submission.

I have considered the grounds set out on the face of the summons and the facts deponed in the affidavits filed for and against the Summons plus the rival written submissions. There is no doubt that the letters of administration in respect of the Estate of Simon Muturi Mungai, deceased, were granted to Bilha Wahito Mungai on 23<sup>rd</sup> June 2005. Bilha Wahito Mungai applied for the grant to be confirmed vide the Summons for Confirmation of grant dated 15<sup>th</sup> March 2006. Miriam Njoki Muturi, the Objector herein, opposed the application for Confirmation of grant by filing an affidavit of Protest she swore on 29<sup>th</sup> May 2006. The dispute was heard by Lady Justice Mary Kasango. The honourable judge dismissed the Protest and confirmed the grant in terms of the Summons for Confirmation of Grant in the judgment delivered on 14<sup>th</sup> May 2009. The Applicant is now before this court seeking for the confirmed grant to be revoked and or

annulled. The main reason advanced by the Applicant is that the parcels of land known as **L.R. NO. TETU/KARATHI/932 and L.R. NO. TETU/KARATHI/933** which were purportedly distributed by the Petitioner did not belong to the Estate of Simon Muturi, deceased, but instead belonged to the Estate of John Muthoga Mugai, deceased. The Applicant accused the Petitioner for failing to disclose to court that she had included as assets of the Estate, those parcels of land which belonged to someone else. The Applicant alleged that she discovered the petitioner's intention when she visited the land's office to do a search on the aforesaid parcels of land upon the demise of John Muthoga Mugai. She has beseeched this court to revoke the grant and issue orders to revert back the ownership of those parcels of land to the Estate of John Muthoga Mugai, deceased. The Petitioner on her part, opposed the Summons for Revocation of Grant on the basis that the Applicant did not have any *locus standi* to file the summons because she has not obtained letters of administration in respect of the Estate of John Muthoga Mugai, deceased. She denied having interfered with the assets of the Estate of John Muthoga Mugai, deceased. She annexed to her further affidavit a copy of the green card in respect of **L.R. NO. TETU/KARATHI/568**. She claimed that the aforesaid land was subdivided into three subdivisions i.e.

- **TETU/KARATHI/931**
- **TETU/KARATHI/932** and
- **TETU/KARATHI/933**

The Petitioner further alleged that her husband (deceased) had bought the entire land from John Muthoga Mugai, deceased, and that title in respect of the aforesaid parcels were issued to Simon Muturi Mugai, deceased on 5<sup>th</sup> July 2000. According to the Petitioner, at the time of the deceased's death i.e. on 11<sup>th</sup> December 2002, titles in respect of the aforesaid parcels of land were registered in the name of the deceased hence she lawfully included them as the assets of his Estate. She also alluded that the aforesaid titles have already been transmitted to her upon the confirmation of grant.

After a careful consideration of the affidavit evidence and the rival submissions, it is not in dispute that the parcel of land known as **L.R. NO. TETU/KARATHI/568** was mentioned as one of the assets of the Estate of Simon Muturi Mungai, deceased. The green card attached shows that the aforesaid title was registered in the name of John Muthoga Mugai, deceased on 20<sup>th</sup> January 2000. The same green card shows that the aforesaid title was transferred to Simon Muturi Mungai on 6<sup>th</sup> October 2000. There is also a note that the aforesaid transaction may have been fraudulent. The aforesaid land appears to have been subdivided into three portions viz **L.R. NOS. TETU/KARATHI/931, 932 and 933**. It is clear from the history of this case that the parcels of land in dispute were registered in the name of Simon Muturi Mungai, deceased by the time of confirming the grant. The process of registering those procuring registration of those titles may appear suspect but there is no evidence that the process of acquisition was challenged by the Applicant nor her deceased's husband. With respect, I agree with the Petitioner that the Applicant's remedy lies elsewhere and not through these proceedings. In short, the parcels of land known as **L.R. NO. TETU/KARATHI/568** which gave rise to **L.R. NO. TETU/KARATHI/931, 932 and 933** upon subdivision formed part of the assets of the Estate of Simon Muturi Mungai, deceased, by virtue of registration. The Petitioner cannot be faulted.

In the end, I find the Summons for revocation and annulment of grant to be without merit. The same is dismissed. Since the dispute involves members of the same family, I direct that each one of them meets her own costs.

***Dated and delivered at Nyeri this 27<sup>th</sup> day of May 2011.***

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Kingori for the Protestors. No appearance for Wagita for Petitioner.