



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 566 OF 2007

IN THE MATTER OF THE ESTATE OF MWANGI KABOGO – DECEASED

GICHOHI MWANGI.....APPLICANT

VERSUS

RUTH WAMBUI NGANGA.....RESPONDENT

JUDGMENT

This judgment is the result of the summons for revocation or annulment of grant dated 20th November 2007. In the aforesaid Summons, **Gichohi Mwangi**, hereinafter referred to as the Applicant, sought for the grant issued to **Ruth Wambui Ng'ang'a**, hereinafter referred to as the Respondent and confirmed on 17th August 2007, to be revoked. The Applicant filed two affidavits he swore to support the Summons. The respondent on her part, did not file any response to oppose the application despite having been given a chance to do so. When the summons came up for interpartes hearing, this court directed that the summons be disposed of by affidavit and written submissions. At the time of writing this judgment, the applicant was the only party who had filed his submissions.

I have considered the grounds set out on the face of the Summons plus the averments made on the supporting affidavits. The main grounds which were put forward in support of the revocation of grant are *inter alia*:

(i) That the Respondent had failed to disclose to the trial court that the applicant was a beneficiary of the estate of Mwangi Kabogo, deceased.

(ii) That the applicant was never cited nor was his consent sought by the respondent.

(iii) That the respondent purported to distribute land that did not form part of the deceased's Estate.

The questions which must be answered are threefold. The first question is whether or not the respondent concealed from court that the Applicant and others were beneficiaries to the deceased's Estate? The Applicant has averred in his affidavit and further affidavit that he is a son to the late Mwangi Kabogo. He claimed that the grant issued on 9th May 1995 and confirmed on 17th August 2007, disinherited him and his brothers. The applicant named the following people as those having survived the deceased:

- Peter Njore (deceased)

- Teresia Wanjiku
- Eunice Wanjiku
- Wambui Mwangi
- Georgina Njeri
- Hannah Waruguru
- Irungu Mwangi
- Paul Ngunjiri
- Gitonga Mwangi.

I have perused the affidavit of Ruth Wambui Ng'ang'a which was filed in support of the summons for confirmation of grant dated 16th June 1999 before the Senior Principal magistrate's Court vide **Muranga P.M.C. SUCC CAUSE NO. 98 OF 1995**. In paragraph 2 of the aforesaid affidavit, it is clear that the respondent listed the following persons as those who survived the deceased:

- Ruth Wambui Ng'ang'a - wife
- Duncan Gichohi Ng'ang'a - son
- Simon Irungu Ng'ang'a - son
- Jamleck Mwangi Ng'ang'a - son
- Dishon Gachau Ng'ang'a - son
- John Mutuohoro Ng'ang'a - son
- David Wairegi Ng'ang'a - son
- Peter Ngigi Ng'ang'a - son
- Winnie Wanjiru Ng'ang'a - daughter

A critical comparison of the two lists will reveal that they are two different sets of beneficiaries. Can it be said that the Petitioner had failed to disclose to court that those names mentioned by the Applicant were also beneficiaries of the Estate of Mwangi Kambogo alias Joshua Nganga Kambogo, deceased? According to the Applicant, the deceased was known as Mwangi Kambogo with no alias. It is the applicant's submission that the Respondent gave the deceased name alias Joshua Ng'ang'a Kambogo for purposes of defrauding his Estate and particularly, the parcel of land known as Maragua ridge 104. The Applicant pointed out in his affidavit that the area chief had purported to state that Joshua Ng'ang'a Kambogo was also known as Mwangi Kambogo which was false. Attached to the Applicant's further affidavit is the letter dated 28th December 1967 written by one Ndirangu Kambogo. In the aforesaid letter, the author clearly stated that the parcel of land known as Maragua ridge 104 was owned by Mwangi who died without bequeathing the same to Joshua Ng'ang'a Kambogo. Unfortunately the aforesaid averments were not controverted by the Respondent. I have no reason to disbelieve them. I am convinced that Mwangi Kambogo and Joshua Ng'ang'a Kabogo are and were totally different and distinct individuals hence it was wrong for the Applicant to refer Mwangi Kabogo, deceased as alias Joshua Ng'ang'a Kambogo. The Applicant is therefore guilty of concealing from court material facts relevant to this cause. On the basis of this singular ground, I am convinced that the grant issued on 9th May 1995 and confirmed in the respondent's name on 17th August 2008 vide **Murang'a S.P.M.C. Succession NO. 98 of 1995** should be revoked. I hereby allow the Summons for Revocation of Grant dated 20th November 2007 as prayed with costs to the Applicant.

Dated and delivered at Nyeri this 27th day of May 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Kingori holding brief Mwangi for the Applicants. No appearance for Respondents in person.