



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO. 248 OF 2004**  
**IN THE MATTER OF THE ESTATE OF MONICAH NJAMBI NGANGA (DECEASED)**  
**RULING**

The Petitioner and the Objector are brothers. Their dispute is who should inherit the only parcel of land known as RARE/TERET/BLOCK 1/13, the only asset left by Monicah Njambi Nganga their deceased mother who died on 31<sup>st</sup> May 2003 (*the deceased*).

The Petitioner took out Letters of Administration on 4<sup>th</sup> March 2005 which were confirmed by a Certificate of Confirmation of Grant issued on 28<sup>th</sup> October 2005, and the parcel of land RARE/TERET BLOCK 1/13 MUTUKANIO (*the suit land*) was distributed to the Petitioner.

Unhappy with the distribution of the deceased's estate, the Objector filed a Summons dated 18.08.2006 for Revocation of the Grant claiming that the Petitioner obtained the Grant fraudulently by making a false statement and by concealment from the court of something material to the case. That is one of the grounds for revocation/annulment of a Grant as set out by Section 76(b) of the Law of Succession Act and Rule 44(i) of the Probate and Administration Rules.

The Objector's basic evidence is that he was not consulted and involved in the application of the grant for administration of the deceased's estate, that the Petitioner filed the Application secretly, and he was not made aware of the grant, and that he never attended court nor filed any consent, that he did not get a share of the subject land, and more importantly, that he and the Petitioner live on the suit land, and for this reason he is entitled to a share of the land.

That in essence was, the substance of the Objector's Supporting Affidavit in support of the Summons to revoke and annul the grant. It was also his sole evidence at the hearing of the Summons on 4<sup>th</sup> May, 2011.

On his part the Petitioner denied every allegation by the Objector. He filed a Replying Affidavit sworn on 3<sup>rd</sup> October 2006, and a Supplementary Affidavit sworn on 16<sup>th</sup> July 2007, and filed on 18<sup>th</sup> July 2007. The Petitioner also gave evidence, the substance of which was a denial that he obtained the grant fraudulently or that he made any false statement or concealed from the court something material to the case.

On the contrary the Petitioner deposed in his reply to the Objector's further affidavit that that Objector signed the consent for the distribution of the estate, in the presence of their elder sister, Bitiris (Beatrice), Wanjiru Gachiri, to their younger brother to their deceased father called Thuku Nduati, Grace Wangui Macharia and George Ndungu Macharia among other relatives and that the Objector signed the

consent before N. O. Ateya Advocate, and that the Objector's denial was an attempt to set aside the said consent through the application by lying to the court.

The Petitioner also deposed that the Objector was given family land known as Location/Mukarara/638 in Muranga, but the Objector has in addition to the Muranga land, his own land with separate title, adjacent to the suit land.

Again the above was the evidence of the Petitioner. He informed his sister and brother when he filed the Succession Cause. They participated. They signed the application and consent for confirmation of the grant. The consent was signed before an Advocate while with the Objector and the sister Beatrice Njeri, and denied any allegation of forgery of the Objector's signature.

The Objector testified that his interest was only on the suit land which land was held in trust for him by his mother as he was the youngest in the family. His father had given his brother family land in Muranga which was ancestral land which their father inherited from his father, their grandfather.

The evidence of the Petitioner was confirmed by that of Beatrice Wanjiru Gachiri, the Petitioner's and Objector's elder sister, that the Objector signed the consent in the Advocate's office. She herself was happily married and did not lay claim to her parents' estate, that her brothers, the Petitioner and the Objector own their own parcels of land, and the suit land rightly belongs to the Petitioner, that the Objector has land in Murang'a and Njoro.

In addition to the evidence by both the Petitioner and Objector, their respective counsel, Mr. Wachira Mbuthia (*for the Petitioner*), and Mr. Rubua Ngure (*for the Objector*) both filed written submissions at the instance of the court.

The summons the Subject of this ruling is expressed to be based upon the provisions of Section 76(1)(b) of the Law of Succession Act (Cap. 160, Laws of Kenya), and Rule 44(1) of the Probate and Administration Rules. Rule 44(1) and subsequent sub-rules (3) to (5) inclusive are purely procedural and establish the mode of application to the court for revocation and or annulment of the grant. The substantive law is Section 76(1)(b) - that the grant be revoked on the ground that it was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case.

It was the Objector's case **firstly** that he never participated in the application for the grant of Letters of Administration upon their mother's estate, and **secondly**, even if the court found that he did, signature to the consent that the Confirmation of the Grant was forged by the Petitioner.

It was the Petitioner's case that the Objector fully participated in the applicant for the grant of the Letters of Administration and also confirmation thereof. It was both the Petitioner's and the evidence of PW2 (*Bitiris Wanjiru Gachiri, sister to the Petitioner and the Objector*) that she and the Objector duly executed the consent before N. O. Ateya Advocate on 8<sup>th</sup> September 2005. PW2 testified that she does not know how to read and write, but she signs her name by writing the initials of her name "B.W.G.". The consent is not signed by the Petitioner; the consent is by the Objector and PW2 to the Petitioner to inherit the suit land. The consent reads -

***"Now we, BITIRIS WANJIRU GACHIRI and DAVID NDUNGU NGA'NG'A DAVID the daughter and son of the deceased MONICAH NJAMBI NGANGA of P. O. Box 100, Egerton DO HEREBY CONSENT, to the distribution of the properties as per attached affidavit."***

Paragraph 5 of the Petitioner's Affidavit which was also attested to by the same Advocate, N. O. Ateya, provided that the suit land be inherited wholly by the Petitioner.

It is significant to note that PW2 emphasized in her evidence that she and her two warring brothers attended upon the Advocate's Office together, and that the Objector signed the consent on distribution, and she does not know why he changed his mind after the Grant was confirmed.

Having considered the application, the grounds, the affidavits in support, and Replying Affidavits in Opposition thereto, the Petitioner's Counsel's submissions and those of the Objector, and having considered the law as stated above, I have concluded that there is no evidence or material before me to show either that the Application for the Grant was made secretly by the Petitioner or that the Grant was confirmed fraudulently or by making a false statement or concealing something material to the case.

It seems clear to me that the Objector is the more endowed. He has access to the Parcel No. Loc. Mukarara/638 comprising about 2.5 acres, and two other parcels of land, at Molo and Njoro each of approximately 2.5 acres, all inherited or acquired through the efforts of the Petitioner's and Objector's deceased father. I cannot say that the Objector has suffered any injustice by the distribution of the suit land to the Petitioner.

I therefore dismiss the same with a direction that this being a family dispute each party should bear its own costs.

There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 3<sup>rd</sup> day of June 2011**

**M. J. ANYARA EMUKULE**  
**JUDGE**