

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 179 OF 2008

GATUTHA GICHU.....APPLICANT

VERSUS

PATRICK MWANGI GICHU..... RESPONDENT

ORDER ON REVISION AND DIRECTIONS

On 11th April 2011, Mr. Mugo, learned advocate for Gatutha Gichu, the Petitioner herein, applied for this Succession Cause to be consolidated with **Nyeri H.C. Succession Cause No. 863 of 2010**. I called for the aforesaid file for perusal in order to give directions.

My perusal of these files has revealed that Gatutha Gichu cited Christopher Gatutha Gichu and Patrick Mwangi Gichu to indicate whether or not they were ready to take up letters of administration intestate in respect of the Estate of Zaweria Wanjiru Gichu alias Wanjiru Gichu, deceased. It would appear the duo did not file any positive response hence the citor was prompted to petition for letters of administration intestate through the petition dated 24th June 2009 vide **Nyeri H. C. Succ. Cause No. 179 of 2008**. The grant was made to Gatuthu Gichu on 15th September 2009. On 22nd March 2010, the Petitioner applied for the grant to be confirmed vide the Summons for Confirmation of Grant dated 17th March 2010. When served with the aforesaid summons, Christopher Gatutha Gichu filed an affidavit of protest against the same. In the aforesaid affidavit, he revealed that another grant had been made and confirmed vide **Othaya R.M.C. Succession cause No. 30 of 2008**. In fact he annexed a copy of the grant to the affidavit of Protest in which it was clear that the grant had been issued to Patrick Mwangi Gichu, the other cite. It would appear, when Gatutha Gichu got this vital information, he abandoned **Nyeri H.C. Succ. No. 179 of 2008** and proceeded to file the Summons for Revocation of Grant dated 15th September 2010. I have now been urged to consolidate **Nyeri H.C. Succ. Cause No. 179** of 2008 with **Nyeri H.C. Succ. No. 863 of 2010**.

After a careful perusal of the aforesaid files, I have come to the conclusion that the prayer by Gatutha Gichu must be rejected. The two files cannot be consolidated. One of those files seeks to have the grant issued vide **Nyeri H.C. Succ. Cause No. 179 of 2008** to be confirmed. There is a protest showing that a grant was issued to Patrick Mwangi Gichu on 26th September 2008 and confirmed on 22nd June 2009 vide Othaya **R.M.C. Succ. Cause No. 30 of 2008**. By the time of obtaining the grant vide **Nyeri H.C. Succ. Cause No. 179 of 2008**, i.e. on 15th September 2009, Patrick Mwangi Gicheru had already had his grant confirmed i.e. on 22nd June 2009. The best I can do in the circumstances is to issue an order which I hereby do, revoking the grant issued vide **Nyeri H.C. Succ. Cause No. 179 of 2008**. I also strike out **Nyeri H.C. Succ. No. 179 of 2008** with no order as to costs. I direct that parties should proceed for hearing of **Nyeri H.C. Succ. Cause No. 863 of 2010**.

Dated and delivered at Nyeri this 29th day of July 2011.

**J. K. SERGON
JUDGE**

In open court in the presence of Mugo for Applicant and N/A for Respondent with notice.

J. K. SERGON
JUDGE