



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 637 OF 2008

IN THE MATTER OF THE ESTATE OF

WAHINYA GACHINGA AND

MURIUKI GACHINGADECEASED

AND

KARANGU MURAGEAPPLICANT

Versus

FAITH WAITHIRA KAMINJU.....RESPONDENT

RULING

Karangu Murage, the Applicant herein, beseeched this court to exercise its inherent power under rule 73 of the Probate and Administration to issue an order authorizing the Kirinyaga, District Land Registrar to delete and or cancel all entries made in the register in respect of the parcel of land known as L.R. no. Kiine/Rukanga/651 pursuant to the grant issued vide Kerugoya S.R.M.C. Succ. Cause no. 209 of 2006. The applicant further urged this court to issue an order reverting the aforesaid title back to the name of Muriuki Gachinga, deceased. The applicant's application is the summons general dated 27th September 2010. It is supported by the affidavit of the applicant. Faith Waithira Kaminju, the Respondent herein, filed the replying affidavit she swore to oppose the summons.

The Respondent herein was issued with the grant of letters of administration intestate in respect of the estate of Wahinya Gachinga alias Muriuki Gachinga deceased. The grant was confirmed on 13th July 2007 vide Kerugoya S.R.M.C. SUCC. Cause no. 209 of 2006. The aforesaid grant was revoked by this court on 28th January 2010. The applicant has argued that it has become necessary to seek the orders to be issued to facilitate execution of the order for revocation of grant. The 1st Respondent opposed the summons claiming that she has filed Nyeri H.C. Succ. C. no. 98 of 2011 in which she sought for the grant issued to the Applicant vide Kerugoya S.R.M.C. Succ. Cause no. 56 of 2003. Basically, the Respondent is of the view that the status quo be maintained pending the outcome of the aforesaid proceedings. A careful reading of this court's ruling delivered on 28th January 2010, will reveal this court had made a finding to the effect that the Respondent herein had misled the court into issuing an order directing the Land Registrar to dispense with the production of the original title in respect of L.R. no. Kiine/Rukanga/651. The court formed the opinion that the Respondent knew that the title was in possession of another person yet she chose to mislead the court. The applicant is basically seeking for the aforesaid title to revert back to the estate of Muriuki Gachinga, deceased. I am convinced the order should granted otherwise the order of revocation of grant will be rendered superfluous. I allow the summons

general dated 27th September 2010 with costs to the Applicant.

Dated and delivered 29th Day of July 2011.

J.K. SERGON
JUDGE

In open court in the presence of Miss Mwai holding brief Kirubi for Applicant and Mr. Mugo holding brief Munene for Respondent.

Mugo: I apply for a stay of execution for 30 days.

COURT: Order given as prayed.

J.K. SERGON
JUDGE