



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC. CIVIL APPLICATION NO. 197 OF 1995

PATRICK MACHARIA.....1ST APPLICANT
MAINA MACHARIA.....2ND APPLICANT
FRANCIS NJOROGE.....3RD APPLICANT

VERSUS

MWANGI NDUATI.....RESPONDENT

RULING

This ruling is the outcome of the amended summons for revocation of grant dated 5th November 1996 in which **Patrick Macharia, Maina Macharia** and **Francis Njoroge**, hereinafter referred to as the 1st, 2nd and 3rd applicants applied for the grant issued to **Mwangi Nduati Kariuki** the Respondent herein, to be revoked. When the Summons came up for substantive hearing, learned counsels appearing in the matter recorded a consent order to have the Summons determined by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the summons plus the facts deponed in the affidavits filed in support and against the application. The Applicants argued that the Respondent obtained the grant by misleading the court that he was the only surviving dependant of Kamau Kariuki, deceased, yet he knew that the Applicants who are nephews to the deceased existed. It is also alleged that the respondent had failed to disclose that the deceased had made an oral will on 28th November 1993 in respect of **LOC. 10/GATHINJA/24**.

The Respondent on his part vehemently opposed the summons for revocation of grant on the ground that the deceased had made no oral will. The Respondent acknowledged that the Applicants are the deceased's nephews too. He, however, stated that he was entitled to solely inherit the deceased's estate because he took care of the deceased even when the Applicants' father was alive.

Having taken into account the rival submissions, it is now evident that the Applicants and the Respondent are nephews to the deceased. They all fall within the category of people who are entitled to inherit the deceased's Estate under *Section 39 (1) (c)* of the Law of Succession Act since the deceased died without a child of his own. The Respondent has averred that he took care of the deceased and as a sign of appreciation he bequeath to him his land. I have anxiously considered the averments made by the Applicants. They at one time alluded that the respondent's father was dead while he was alive and kicking. They even alleged that the deceased made an oral will. The Applicants have never controverted the respondent's assertion that he lived together with the deceased and took care of him. I believe what the Respondent has stated to be the truth. I am convinced the deceased bequeath his property to the Respondent in appreciation of his nephew's care. In the circumstances the respondent was under no duty

to disclose that the Applicants were also entitled to inherit. In any case the Applicants were living with their father while the respondent was busy nursing and taking care of his uncle. I do not believe the Applicants' assertion that the deceased made an oral will bequeathing part of his land to them. I think that was a make up story to justify the revocation of the grant.

In the end, I find the Summons for revocation of grant dated 5th November 1996 to be without merit. The same is ordered dismissed with costs to the Respondent.

Dated and delivered at Nyeri this 15th day of July 2011.

J. K. SERGON
JUDGE

No appearance for parties.