



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CAUSE NO. 75 OF 2005**

**IN THE MATTER OF THE ESTATE OF PENINAH WANGECHI WAITHAKA ALIAS  
WANGECHI WAITHAKA – DECEASED**

**CHARLES KIRAGU NGECHU.....RESPONDENT**

**VERSUS**

**WASHINGTON MAINA MWANGI.....APPLICANT**

**RULING**

Pursuant to the provisions of *rule 49* of the Probate and Administration rules, Washington Maina Mwangi, the petitioner herein, took out the Summons dated 7<sup>th</sup> June 2010, in which he applied for the Summons for revocation or annulment of grant dated 25<sup>th</sup> March 2009 to be struck out. The summons is supported by the affidavit of the Petitioner. **Charles Kiragu Ngechu**, the Respondent herein, opposed the Summons by filing a replying affidavit he swore on 29<sup>th</sup> June 2011. When the application came up for interpartes hearing, learned counsels recorded a consent order to have the summons disposed of by affidavit evidence and by written submissions.

I have considered the material placed before this Court and the rival submissions filed herein. It is the argument of the Applicant that the respondent was not a beneficiary to the Estate of Penina Wangechi Waithaka, deceased hence he was not entitled to inherit. The Applicant further pointed out that the Respondent would only claim from the Estate in his capacity as a purchaser. The Applicant urged this Court to find that the Respondent's decree was time-barred.

The Respondent implored this Court to dismiss the Summons claiming the same was meant to lock him out of his entitlement from the Estate of the deceased. The Respondent admitted that he obtained a decree vide **Nyeri H.C.C.C. No. 105 of 1978** in which he was awarded 0.5 acres to be excised from **L.R. NO. LOC. 14/KIRU/591**. He admits that the deceased allowed him to occupy a portion measuring 0.5 acres with the understanding that the decree would be executed. He claimed he has been in peaceful occupation of the land until he learnt that the Applicant had obtained title to the land by transmission. He averred that he has made several attempts to have the grant revoked in vain.

I have anxiously considered the grounds set out on the face of the summons General dated 7<sup>th</sup> June 2011 and the facts deponed in the affidavit filed for and against the summons. I have further considered the rival submissions. It is not in dispute that Washington Maina Mwangi the Applicant herein, was given a grant of Letters of Administration intestate in respect of the Estate of Peninah Wangechi Waithaka alias Wangechi Waithaka, deceased, and confirmed on 25<sup>th</sup> October 2007. Charles Kiragu Ngechu, being aggrieved, filed the Summons for Revocation or Annulment of Grant dated 25<sup>th</sup> March 2009, whereof he applied for the grant to be revoked because he thought the Applicant had obtained the same by means of

fraudulent concealment of facts material to this case and on the basis that he made untrue allegation of facts. He alleged that the Applicant obtained the grant without involving his sisters being the other beneficiaries. He later abandoned that ground and proceeded to allege that the Applicant had failed to disclose his interest as a purchaser of a portion measuring 0.5 acres to be excised from **LOC. 14/KIRU/591**. He alleged that he had obtained a decree against the deceased to transfer to him the aforesaid portion vide **Nyeri H.C.C.C. No. 105 of 1975**. There is no doubt that the Respondent herein had purchased 0.5 acres from the deceased. It is also not in dispute that the Respondent also obtained a decree awarding him 0.5 acres to be excised from **LOC. 14/KIRU/591** vide **Nyeri H.C.C.C. No. 105 of 1978** on 4<sup>th</sup> October 1999. The executive officer was authorized to execute the relevant documents to give effect to the decree. It is admitted that the decree has not been executed for the last 20 years. By the time the Applicant obtained the grant in the year 2007, 16 years had lapsed since the decree was issued. The Respondent's main complaint is that the Applicant had failed to disclose his interest as a purchaser and decree holder when he distributed the Estate. I have been urged to strike out the summons for revocation or annulment of grant on the basis that the decree is time-barred. With respect, I agree with the submissions of Mr. Mindo, learned advocate for the applicant that the decree has expired by virtue of *Section 4(4)* of the Limitation of Actions Act. The Respondent has himself to blame when he failed to cause the decree to be executed within 12 years. He waited until 20 years lapsed and until the Applicant had transmitted the suit land to himself. His claim as a decree holder has been extinguished by effluxion of time.

In the end, the Summons for Revocation or Annulment of grant dated 25<sup>th</sup> March 2009 serves no useful purpose. The same is ordered struck out with costs to the Applicant.

*Dated and delivered at Nyeri this 18<sup>th</sup> day of November 2011.*

**J. K. SERGON**  
**JUDGE**

In open Court in the presence of Mr. Mindo for Applicant and Ombongi for Respondent.