



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CAUSE NO. 915 OF 2009

IN THE MATTER OF THE ESTATE OF MUKONO RWERE – DECEASED

JOSEPH MUKONO KUNGURU.....APPLICANT

VERSUS

JAMES KABEERE KUNGURU.....RESPONDENT/PETITIONER

JUDGMENT

This judgment is in respect of the Summons for Revocation or annulment of grant dated 8th October 2009. In the aforesaid Summons, **Joseph Mukono Kunguru**, the applicant herein, is seeking for the grant issued to **James Kabeere Kunguru**, the Respondent herein, on 23rd September 1990 to be revoked or annulled. The applicant relied on one main ground, that is to say that the Respondent concealed from the Court something material to the case. It is the applicant's contention that the Respondent took the lion share of the Estate instead of sharing the same equitably between the beneficiaries. It is also alleged that he brought strangers to share the Estate. The Respondent filed a replying affidavit to oppose the Summons. The dispute was directed to be determined by oral evidence.

I have considered the evidence presented by both sides plus the submissions filed herein. This dispute appears to have a controversial past. The asset of the Estate which the parties are quarrelling over is the parcel of land known as **L.R. NO. ARAGWI/RAIMU/23**. The same was the subject of **Kerugoya P.M.SUCC. Cause No. 45 of 1990**. A grant was issued and confirmed on 22nd January 1991 in which the aforesaid land was shared as follows:

- James Kabeere Kunguru - 1.01 Ha.
- Joseph Mukono Kunguru - 0.20 Ha.
- Micahel Njamumo Kunguru - 0.20 Ha.
- Kiburia Girls Secondary School - 1.05 Ha.
- Stanley Karimi Koigi - 0.20 Ha.
- Hellen M. Mbuki - 0.10 Ha.
- Joseph Mwaniki Muchira - 0.10 Ha.

There was a lull moment until 2004 when the Applicant filed a complaint before the Kirinyaga Land Disputes Tribunal claiming the Respondent had acquired a larger share of the land. He claimed that he was entitled to a portion comprised in **L.R. NO. BARAGWI/RAIMU/1034**. It is important to note that the Land disputes Tribunal awarded the Applicant and Michael Njemumo Kunguru (now deceased) each ½ an acre to be excised from the aforesaid land. The respondent appealed to the Provincial Land disputes Appeals Committee who in turn set aside the Tribunal's award and proceeded to award the Applicant 1 acre out of **L.R. NO. BARGWI/RAIMU/1034**. The respondent being dissatisfied filed an appeal before this Court vide **Nyeri H.C.A. No. 79 of 2007**. The decision of the Appeals Committee was set aside on appeal. The respondent decided to come back to this Court seeking to revoke the grant which transmitted **L.R. NO. BARAGWI/RAIMU/23** to the beneficiaries.

Let me now revisit the Summons for Revocation or annulment of grant. I have already stated that the Applicant has accused the Respondent of concealing material facts from court. I have carefully considered his evidence and it is clear that the Applicant and the other beneficiaries were present in Court when the cause came up for the hearing of the application for Confirmation of Grant. In fact after the Confirmation of Grant, the surveyor prepared mutation forms which the Applicant duly signed to approve the subdivisions. In cross-examination the Applicant admitted that he has not complained that his signature which was appended on the mutation forms had been forged. There is evidence that the Applicant even paid Ksh.250/= for his title deed. The Respondent on his part explained the reasons why it was necessary for him to be given a large portion of the land. He told this court that he spent a lot of money in having the restriction and caution placed by the Government against the title removed. The Applicant did not controvert this evidence. There was also ample evidence that the other beneficiaries have since then sold their portions hence the purchasers' proprietary interests are protected under *Section 93* of the Law of Succession. In the evidence tendered by the Applicant, there was no proof of the allegation that the Respondent concealed material facts from them nor from the Court. The complaint in respect of the size of land given to the Respondent was a matter which should have been sorted out by way of Protest during the confirmation of grant. It is now about 20 years since the grant was confirmed. It will be utterly unfair and unjust to reopen the issue affecting **L.R. NO. BARAGWI/RAIMU/23** which was closed upon sub-division. The administration of the Estate of Mukono Rwere, deceased is complete hence there is nothing to administer now. The Applicant is guilty of inordinate delay and laches. He failed to pursue his rights expeditiously. He waited until the administration of the Estate was complete to lodge his claim.

For the above reasons, I see no merit in the appeal. The same is dismissed with costs to the Respondent.

Dated and delivered at Nyeri this 18th day of November 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Wanjohi for the Applicant and the Applicant in person.