



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. 124 OF 2008**

**IN THE MATTER OF THE ESTATE OF KAREBE MAINA ALIAS MURAGE NGUKU –  
DECEASED**

**SIMON MWAI KAREBE.....APPLICANT**

**VERSUS**

**BERNARD GICHUKI MURAGE.....RESPONDENT**

**JUDGMENT**

The subject matter of this judgment is the Summons for revocation or annulment of grant of letters of administration intestate in respect of the Estate of Karebe Maina alias Murage Nguku, deceased. The aforesaid summons was taken out by Simon Mwai Karebe, the Applicant. Bernard Gichuki Murage, the Petitioner herein, opposed the summons by filing an affidavit. The parties involved in this dispute recorded a consent order to have it disposed of by affidavit evidence and submissions.

I have taken into account the rival affidavit evidence plus the submissions. The applicant herein has sought to have the grant revoked on the ground that the same was obtained fraudulently by concealment from court of material facts and by the making of a false statement on the part of the Petitioner. The applicant claimed he was a son of the deceased and a step-brother to the Petitioner and a brother in-law to one Peris Wambui Wahome. He stated the Petitioner had filed succession proceedings before the Karatina Resident Magistrate's Court in respect of an intestate Estate hence there was no will left by the deceased. He alleged he was not involved in the proceedings and from the sharing of the Estate. In a nutshell the Applicant avers that the Petitioner did not disclose that the Applicant was a beneficiary to the deceased's Estate and did not inform him of the filing of the cause. The Petitioner on his part is of the view that the deceased left an oral will to his family members. He claimed that the deceased provided for the Applicant during his lifetime by giving him **L.R. NO. MAGUTU/RAGATI/264** which measures approximately 2.5 acres. The Petitioner further stated that the deceased gave **L.R. NO. MAGUTU/RAGATI/232** measuring approximately 4.2 acres to Wahome Murage (now deceased) and Bernard Gichuki Murage as trustees. It is alleged that the aforesaid land was later subdivided into two equal portions. One subdivision each was given to Peris Wambui Wahome and Bernard Gichuki Murage i.e.

**L.R. NO. MAGUTU/RAGATI/1363** - Peris Wahome.

**L.R. NO. MAGUTU/RAGATI/1364** - Bernard Murage.

It is the Petitioner's submission that the Applicant knew that the deceased gave his land *intervivos* and that is why he did not protest nor object to the proceedings at Karatina Court.

After anxiously considering the evidence and the submissions, I am convinced that Karebe Maina alias Murage Nguku, deceased, distributed his property *intervivos*. I am satisfied that is what the Petitioner refers to as the deceased's oral will. It is apparent from the schedule of distribution of the Petitioner that the Estate was distributed according to the deceased's wishes. I find the Petitioner not guilty of fraud nor concealment of material facts.

In the end the summons for Annulment of Grant lacks merit. It is dismissed with each party bearing his or her own costs.

***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. Kamwenji for the Applicants. No appearance for the Respondent.