



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 637 of 2008
IN THE MATTER OF THE ESTATE OF WAHINYA GACHINGA AND MURIUKI GACHINGA - DECEASED

KARANGU MURAGE.....APPLICANT

VERSUS

FAITH WAITHIRA KAMINJU.....1ST RESPONDENT
HELEN NJERI IRUNGU.....2ND RESPONDENT
WINFRED WACHINGA IRUNGU.....3RD RESPONDENT
JAMES W. IRUNGU.....4TH RESPONDENT
NAOMI W. IRUNGU.....5TH RESPONDENT
DANIEL WAHINYA IRUNGU.....6TH RESPONDENT

RULING

The subject matter of this ruling is the summons for revocation or annulment of grant dated 30th October 2008 taken out by **KARANGU MURAGE**, the applicant herein, pursuant to *rule 44 (1)* of the Probate and Administration Rules. In the aforesaid summons the Applicant seeks to have the grant issued to Faith Waithera Kaminju, the 1st Respondent herein, vide Kerugoya S.R.M.C. Succession No. 209 of 2006. The summons is supported by the affidavit of the Applicant sworn on 30th October 2008. The application was served upon the 1st Respondent and the beneficiaries of the Estates of Wahinya Gaching'a, deceased and Muriuki Gaching'a, deceased. No replying affidavit was filed by them. When the summons came up for interpartes hearing, learned counsels recorded a consent order in which they agreed to have the application disposed of by written submissions. At the time of writing this ruling, the Applicant's counsel was the only party who had filed his submissions.

It is the submission of the Applicant that the 1st Respondent fraudulently and illegally mixed the Estates of two deceased persons namely Wahinya Gaching'a and Muriuki Gaching'a whereupon she purported to take out one grant of representation. The Applicant further argued that as a result of the above, the 1st Respondent unlawfully disinherited the lawful and rightful heirs to the Estate of Muriuki Gaching'a, deceased, when she took over the land belonging to that Estate. For this above reason, the Applicant urged this Court to revoke the grant.

I have carefully considered the grounds set out on the face of the summons for revocation of grant plus the facts deponed in the affidavit of Karangu Murage sworn on 30th October 2008. I have further considered the written

submissions filed by the Applicant's learned counsel. There is no doubt that the 1st Respondent initially filed succession proceedings to succeed the Estate of Wahinya Gaching'a, deceased. On the 6th day of July 2007, the Applicant filed an application of the same date in which she sought to have the grant rectified so that the deceased's name is amended to read as Wahinya Gaching'a alias Muriuki Gaching'a instead of Wahinya Gaching'a. The Applicant in the same application also asked the Court to dispense with the production of the original title in respect of **L.R. No.**

KIINE/RUKANGA/651. The orders were granted as prayed. It is now apparent that Wahinya Gaching'a and Muriuki Gaching'a were two different persons. In fact they were brothers. It has also emerged that **L.R. No.**

KIINE/RUKANGA/2378 was registered in the name of Wahinya Gaching'a, deceased, whereas

KIINE/RUKANGA/651 was registered in the name of Muriuki Gaching'a, deceased. It would appear from the material placed before this Court that the Applicant was aware of those facts but she decided to mislead the Court into correcting the grant thus combining the Estates of two deceased persons. She successfully managed to also convince the court to dispense with the production of the original title in respect of **L.R. No. KIINE/RUKANGA/651**. She obviously knew she was not in possession of the aforesaid title. In the process of her deceitful activities, the 1st Respondent intermeddled with the Estate of Muriuki Gaching'a, deceased. This is a matter which should be investigated by the Attorney General to establish whether or not a criminal offence was committed under *Section 45* of the Law of Succession Act.

In the end I am satisfied that the summons for revocation of grant dated 30th October 2006 has merit. It is allowed as prayed with costs to the Applicant being met personally by Faith Waithira Kaminju.

Dated and delivered at Nyeri this 28th day of January 2010.

J. K. SERGON

JUDGE

In open Court in absence of parties with Notice.