



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Succession Cause 458 of 2008**

**ESTATE OF MIANO MURAGE ..... DECEASED**

**AND**

**SAMUEL MWANGI MIANO**

**Versus**

<b>WANGUI W/O MIANO</b>	<b>-</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>HANNAH WANGARI MIANO</b>	<b>-</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>JOSPAT MURAGE MIANO</b>	<b>-</b>	<b>3<sup>RD</sup> RESPONDENT</b>
<b>JAMLICK WAWERU MIANO</b>	<b>-</b>	<b>4<sup>TH</sup> RESPONDENT</b>

**RULING**

Pursuant to rules 4a and 73 of the Probate and Administration Rules, Samuel Mwangi Miano, the applicant herein, took out the summons dated 18<sup>th</sup> November 2008, in which he applied to issue following directions:

***“That this court do give directions to the effect that the summons for revocation of grant vis- à-vis the original succession cause file No. 117 of 1977 at Kerugoya which has been destroyed hence unavailable”.***

In essence the applicant sought for leave to proceed with the application for revocation of grant on the basis of a skeleton file. Samuel Mwangi Miano swore an affidavit in support of the summons. The Respondents namely: Wangu s/o Miano, Hannah Wangari Miano, Josphat Murage Miano and Jamlick Waweru Miano opposed the application by filing grounds of opposition and the replying affidavit of Hannah Wangari Miano.

It is the submission of the applicant that he filed a summons for revocation of the grant issued on 16<sup>th</sup> October 1977 vide Kerugoya Succession cause No. 117 of 1977. When he requested for the lower court file, he was informed that the

file had been amongst those destroyed under the destruction of court records in 1997 advertised in the Kenya Gazette Notice No. 106 dated 10<sup>th</sup> January 1997. The applicant is of the view that he was disinherited of his father's estate. He claimed that he attempted to pursue his rights by filing a suit for adverse possession but the suit was dismissed on the ground that the applicant's claim lay in succession proceedings.

In the replying affidavit of Hannah Wangari Miano. The Respondents have urged this court to reject the application. It is said the same is not made in good faith because the parties to this dispute have litigated over the property in dispute. There is no dispute that the Kerugoya case whose file is sought to be re-opened was filed in 1977 and determined in 1979. Annexed to the replying affidavit is the judgment of T.T.M. Aswani vide Kerugoya S.R.M.C. Civil appeal No. 8 of 1980. There was also an appeal to this court against the decision of T.T.M. Aswani. In his judgement of 17.6.1983. Justice Gachuhi as he then was affirmed the decision of T.T.M Aswani. Parties have gone to the court of Appeal over the same matter and the Court of Appeal delivered itself on 15<sup>th</sup> May 1997. The record shows that the applicant herein together with one Douglas Kariuki Maina took out an originating summons vide Nyeri H.C.C.C No. 154 of 1987 (O.S.). they applied to be declared to have acquired the parcel of land known as Kiine Kibingoti/Ngunguini/492 by adverse possession. It is admitted by the applicant that lady justice Kasango, struck out the O.S. in her ruling of 19<sup>th</sup> June 2008. I have perused that judgement in part and it is clear that the honourable judge dismissed the O.S. on the basis that the same was res judicata. It is therefore not true that the suit was struck out on the basis that the dispute was that of succession. It is a cardinal principle of law that litigation must come to an end. The court records of the Kerugoya court were destroyed in the year 1997. That was 20 years after the original suit was filed before that court. The intention to destroy such records were advertised in the Kenya Gazette notice No. 106 dated 10<sup>th</sup> January 1997. The applicant did not object to that notice. He has not stated in his application that he was not aware of such a move by the court. He is now before this court seeking for leave to open a skeleton file in respect of a file which was destroyed about 13 years ago. The record shows that the applicant has been busy pursuing various suits in different courts. He had no intention of seeking for the revocation of the grant given in 1979. It is the interest of justice that the matter must be left to rest. I agree that to order for the matter to be re-opened will cause great prejudice to the Respondents. It is possible that the relevant witnesses may have perished. I find the application to be vexatious and without merit. It is dismissed in its entirety with costs.

Dated and delivered this 25<sup>th</sup> day of January 2010.

J.K. SERGON

JUDGE

In open court in the presence of Miss Mwangi h/b Gathiga Mwangi for Respondents N/A Kinyua Kiama.

J.K. SERGON

JUDGE