

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Miscellaneous Civil Application 6 of 2009

IN THE MATTER OF THE ESTATE OF MIRIAM NJERI GITAU (DECEASED)

STEPHEN KARUGO NJAGI.....APPLICANT

VERSUS

JANE WANJIKU GITAU.....RESPONDENT

RULING

The applicant has filed this miscellaneous application for revocation or annulment of the grant issued and confirmed to the respondent on 6th August, 2008.

The application is made on the grounds that the respondent obtained the said grant by concealment of the fact that the applicant is a beneficiary of the deceased person's estate hence entitled to a share of the same and further that the applicant is apprehensive that the respondent may deal adversely with the estate thereby affecting the applicant's interest.

The respondent in his reply has averred that the application is fatally defective, misconceived, bad in law and amounts to an abuse of the process of the court.

That the grounds for nullification and/or revocation of a grant have not been satisfied; that the applicant is not entitled to the estate of the deceased as he is not a beneficiary.

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I have considered the application and the foregoing submissions as well as authorities cited by the respondent's counsel. First I need to point out that an application to annul or revoke a grant can only be brought in the succession cause in which the grant was issued and not by miscellaneous application. See **Rule 44 (1)** of the **Probate and Administration Rules**.

Secondly the applicant's claim to the estate is premised on the fact that before the death of the deceased, he had purchased 2½ acres of a parcel of land from the deceased. That being a land transaction he ought to have annexed to his application some form of written evidence of such transaction. This he has not done. The applicant has similarly failed to furnish the particulars of the parcel of land he purchased.

For these reasons, I come to the conclusion that the applicant has not satisfied the conditions precedent for the annulment or revocation of the grant. His application is, in the result dismissed with costs to the respondent.

Dated, Signed and Delivered at Nakuru this 22nd day of January, 2010.

W. OUKO
JUDGE