



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU Succession Cause 68 of 2007**  
IRERI NYAGA.....APPLICANT

VERSUS

KARANI NGARI.....RESPONDENT

**RULING**

The Applicant in the summons for Revocation or Annulment of the Grant herein has moved the court for the revocation of the same claiming proprietary interests over plot No.593 GACABARI ADJUDICATION SECTION which forms part of the deceased's estate. He relies on 2 grounds on the face of the application as hereunder:-

- (i) *That the grant was obtained by concealment, misrepresentation and material non disclosure or material facts in the case.*
- (ii) *That the proceedings to obtain the grant of letters of administration was defective as there was another petition pending before the same court.*

In his affidavit dated 16/3/2007; he has deponed that there was another Succession Cause No. 5 of 2004 in respect of the same estate where he had been acknowledged as a purchaser of the land in question. He says that the non-disclosure was to the effect that there was another succession cause which had been gazetted and so the petitioner/Respondent herein should not have been allowed to file this cause.

I have perused and noted the contents of the annexures to the Applicant's affidavit. I note that the succession cause No. 5 of 2004 was gazetted on 14/5/2004. There is nonetheless no indication that any grant of letters of administration was issued after that gazette. If any grant was issued then the applicant herein has not availed a copy thereof. There are therefore no 2 letters of administration in this matter. The fact that there was already another Succession Cause pending ought to have been brought to the courts attention before the grant herein was issued. The grant issued to the Respondent herein cannot be revoked for the only ground that there was another application for grant of letters of administration in the same estate which was pending.

Secondly, I note that the applicant herein claims to have purchased the land from the petitioner in Succession Cause No. 5 of 2004. There is no evidence that the said petitioner was ever issued with a grant of letters of administration in order to clothe him with the legal capacity to dispose off the deceased's estate. If he therefore sold the property to the applicant herein without having been appointed the administrator to that estate, that transaction lacked the sanction of the law and it cannot therefore be a basis for revoking the grant herein. Indeed the only recourse the applicant herein has in law is to sue the person who sold the land in question to him for the recovery of his money since the said person lacked the legal capacity to transfer any proprietary rights in the deceased's estate to the applicant herein.

The applicant has therefore not shown sufficient cause to this court as to why the said grant should be revoked. His summons for Revocation or Annulment of grant is hereby dismissed with each

party being ordered to meet its own costs.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated at Embu this 18<sup>th</sup> February, 2010

In presence of:-Ireru Nyaga – Applicant present  
N/A by Respondent