

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 148 of 1994

IN THE MATTER OF ESTATE OF MATIRU WAHOME ...DCD

ESTHER NYAGUTHII MATIRU.....APPLICANT

VERSUS

LABAN WAHOME MATIRURESPONDENT

AND

ELISHIBA WATETU MATIRU.....INTERESTED PARTY

RULING

The subject matter of this ruling is the summons for revocation and or annulment of grant dated 6th November 2007. The aforesaid summons is taken out by Esther Nyaguthii Matiru who also swore an affidavit in support of the application. Laban Wahome Matiru, the Respondent herein, Elishiba Watetu Matiru, and Margaret Muthoni Matiru each filed a replying affidavit to oppose the summons.

At the close of evidence, learned counsels recorded a consent order with the approval of this court to have the summons determined by affidavit evidence and by written submissions. I have considered the written submissions and the aforesaid evidence. The main order sought by the applicant is that the grant of letters of administration in respect of the estate of Matiru Wahome, deceased issued to Elishiba Watetu Matiru and Esther Nyaguthii Matiru be annulled on the ground that the same was obtained fraudulently by the making of a false statement and by the concealment of something material regarding the beneficiaries of the estate. It is the averment of Esther Nyaguthii Matiru that they attended court during the confirmation of the grant where they indicated to the court that they had agreed on the mode of distribution whereupon the grant was confirmed. She now alleges that Laban Wahome Matiru breached their trust in that they later discovered that the distribution of the estate did not confirm to the family agreement. It is said that the family had agreed that the parcel of land known as Tetu/Muthuaini/229 would be shared between Laban Wahome Matiru and Fredrick w. Matiru. It is alleged that Laban Wahome Matiru, used his position as a court clerk to defraud the other family members of the parcels of land known as Tetu/Muthuaini/232 and 233 by causing them to be registered in his name absolutely. Laban Wahome Matiru denied the allegations in his replying affidavit. He claimed that all the beneficiaries to the estate were present when the grant came up for confirmation hence he had nothing to hide from the family. Laban Wahome Matiru was supported by Margaret Muthoni Matiru and Elishiba Watetu Matiru. Paul Nderitu Matiru supported the averments of Esther Nyaguthii Matiru that Laban Wahome Matiru used his position as a court clerk to prepare the application for confirmation in which he transmitted to himself L.R. Nos. Tetu/Muthuaini/232 and 233 in disregard of the family agreement. There is now doubt that the property in dispute i.e. Tetu/Muthuaini/232 and Tetu/Muthuaini/233 were transmitted to the Laban Wahome Matiru. The question is whether or not the Respondent fraudulently transmitted the same to himself as alleged in the summons for revocation of grant. I have carefully perused annexure P.NMI attached to affidavit of Paul Nderitu Matiru and it is clear that the Respondent admitted that he made a mistake. It is also not denied that the applicant who was a co-administratrix did not sign the necessary forms to effect the transmissions. The Respondent has failed to show how he effected the transfers to himself without the input of the applicant. In the end I am satisfied that the applicant abused the trust bestowed upon him by the family and caused the alteration of the schedule of distribution contrary to the family memorandum of

understanding. I am convinced the summons for revocation is were founded. It is allowed as prayed. Since the dispute involves family members I direct that each party bears his or her own costs.

Dated and delivered this 31st day of March 2010.

J.K. SERGON

JUDGE

In open court in the presence of Miss Kabethi for applicant and Mr. Kiminda for Respondent.

J.K. SERGON

JUDGE