



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

Succession Cause 97 of 1991

SUCCESSION

Ø Administration/Distribution carried out under a fraudulent succession cause will be reversed

IN THE MATTER OF THE ESTATE OF M'RINTARI M'RINGERA (DECEASED)

**SOLOMON BUNDI RINTARI PETITIONER
VERSUS**

**M'KIAMBATI M'RINGERA 1ST OBJECTOR
M'MBIJIWE M'RINGERA 2ND OBJECTOR**

JUDGMENT

This is a matter that has been in this court since 1991. In that year, Solomon Bundi Rintari (Solomon) petitioned for grant of letters of administration intestate in respect of the estate of M'Rintari M'Ringera, deceased. In so petitioning, Solomon attached certificates of official search over two parcels of land which he listed as belonging to the deceased. The first one is *Kiirua/205* belonging to Ringera Kungania. The 2nd one is *Ntima/Ntakira/546* belonging to M'Rintari M'Ringera. It does not take much imagination to note that parcel number 205 was not in the name of the deceased name whose estate is the subject of this estate. That notwithstanding, Solomon on 24th July 1992 got the grant issued to him on 23rd October 1991 confirmed. In respect of parcel number 205, the certificate of confirmation provided that Solomon was to get 1.5 acres whilst James Kimathi Rintari and George Kaithuria were to share the balance of the land jointly in common. Stephen M'Kiambati and Gichumbiri M'Mbijiwe filed a Notice of Motion dated 24th June 1999 seeking to be allowed to file objection out of time. On 3rd December 2001 that application was dismissed. Mary Makena Rintari and Harriet Karwira filed a Chamber Summons dated 20th March 2001 seeking for revocation of grant. That application was struck out on 19th November 2001 by the late Justice Tuyoit. The application before me is a Summon for revocation and annulment of grant. It is made by M'Kiambati M'Ringera and M'Mbijiwe M'Ringera. They are the same applicants in the application for leave to file an objection out of time which was dismissed by the court on 3rd December 2001. In the present application they seek revocation of the grant in that the entries made in respect of parcel number 205 be cancelled. The applicants were the sons of M'Ringera Kuungania who died on 7th July 1970. Their deceased father was the registered owner of that parcel of land *Kiirua/205*. They deponed that no succession has been filed in respect of their father's estate to date. They stated that they have continuously occupied parcel number 205 all their lives. That recently the petitioner in this case, Solomon took some prospective buyer and people wishing to lease that land. They argued that Solomon had no interest to seek to sell or lease that land. They further stated that the grant in respect of the estate of M'Rintari M'Ringera was obtained by fraud and in their absence. They sought that the court do find

that the order of distribution of M'Ringera deceased estate was wrong and that a fresh succession be filed in respect of their father's estate. Solomon filed grounds of opposition. I wish to begin by dealing with his argument that the application before court was similar to the one that was filed before. That argument is rejected. The applicant of this present applicant which was dismissed by the court was seeking leave to file an objection out of time. The dismissal of that application does not make the present application to be *res judicata*. The prayers sought in the present application are entirely different from the prayers that were sought in the dismissed application. The application for revocation dated 20th March 2001 was not filed by these applicants. In any case, that application was struck out and not dismissed. That being so, its striking out did not bar another similar application being made. I have also perused the file of HCC Meru 174 of 2001 involving the same party in this matter. That suit was struck out on 13th June 2006. Solomon in his submissions admitted that parcel No. 205 did not belong to his father rather that it belong to his deceased grandfather. His explanation of including that parcel of land, in this succession cause for his deceased father's estate, was that his father had a share in his grandfather's parcel of land number 205. He admitted however that even at the time of petitioning for grant in this matter that parcel of land was in the name of his grandfather. There is no doubt that Solomon fraudulently included his grandfather's property in this succession cause. In my reading of the various applications and submissions made previously in this file, I have found that the applicants who are before me have all along been misunderstood. They have in those previous applications clearly stated that parcel number 205 belongs to their deceased father and not to the deceased in this succession cause. It seems that they were so frustrated at being misunderstood that they were driven to file HCC Meru Number 174 of 2001 where they sought that the succession cause would be deemed as null and void for having included their father's property parcel number 205. As said before, that suit was struck out. Solomon knowing the fraud perpetrated by himself proceed to transfer to himself parcel number 205. To put it mildly, Solomon was a fraudster simpliciter. See the case of **Jane Gachoki Gathecha Vs. Priscilla Nyawira Gitungu & Another.** In this case the Court of Appeal was faced with similar circumstances where the petitioner obtained a grant and transferred property to his name when the true beneficiary was still living on the land and without knowledge that succession had been filed. That petitioner was not a beneficiary of that estate. The Court of Appeal did not hesitate to cancel the titles issued as a result of that fraudulent succession. Having found that Solomon obtained the administration of parcel number 205 by means of fraud, the prayer for cancellation of the entries on the title will be granted. The judgment of this court is as follows:-

1. ***The grant issued to Solomon Bundi Rintari dated 23rd October 1991 and confirmed on 24th July 1992 is hereby rectified to the extent that parcel number Kiirua/205 is removed from the confirmed grant.***
2. ***The land registrar is ordered to cancel all entries on Kiirua/205 effected after that confirmed grant, that is, after 24th July 1992 and to have the title revert to the name of Ringera Kungania deceased.***
3. ***Solomon Bundi Rintari shall pay costs of the summons dated 5th January 2009 to the applicants and the costs of the cancellation of the entries on the register as per No. 2 above.***

Dated and delivered at Meru this 12th day of March 2010.

MARY KASANGO
JUDGE