

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 309 of 2009**

[IN THE MATTER OF
THE ESTATE OF GIKUNDI KIHARA *alias*
GIKUNDI
KIHARO.....
.....DECEASE
D]

AND

**ESTHER
NYAMBURA
WANJOHI.....
PETITIONER**

VERSUS

**JOHN NGATIA
NDUNGU.....
.....OBJECTOR**

RULING

The subject matter of this ruling is the summons for revocation and or annulment of grant dated 19th October 2009 in which John Ngatia Ndungu, hereinafter referred to as the “*Objector*” applied for the grant given to Esther Wanjohi, hereinafter referred to as the “*Petitioner*”, on 6th July 2009 to be revoked. The objector filed an affidavit he swore in support of the summons. The Petitioner filed a replying affidavit to oppose the summons.

The Objector has beseeched this court to revoke the grant issued to the petitioner for the following reasons:

First, that the petitioner failed to disclose to the court that the objector’s grandfather Kihara s/o Karuri had subdivided his land into three (3) portions and gave a portion each to David Wanjohi Kihara, Daniel Ndungu Kihara and Gikundi Kihara alias Gikundi Kiharo. Secondly, that the petitioner is accused of failing to disclose the fact that the objector’s grandmother who died sometimes in the year 2000, left an oral will and bequeathed to the objector a portion of Gikundi Kihara i.e. 1/3 of Thegenge /Karangia/283. Thirdly, that the petitioner made an untrue statement to the effect that she was a creditor to the estate.

The petitioner on her part attempted to controvert the averments of the objector in her replying affidavit. She pointed out that the alleged oral will is invalid in law in that it was made by a person these proceedings do not relate to. The petitioner further clarified that she applied for the grant in her capacity as an heir to the deceased’s estate and not as a creditor.

I have considered the facts deponed in the affidavits filed for and against the summons for revocation of grant. It is not in dispute that the petitioner is a sister-in-law to the deceased while the objector is a nephew to the deceased. The objector is a son to one Daniel Ndungu Kihara who is a brother to the deceased. It is alleged by the objector that the petitioner had failed to disclose the fact that the objector’s grandfather had subdivided his land and bequeathed to three of his sons. It was incumbent upon the objector to establish that what he alleges to have been concealed by the petitioner was within her knowledge at the time of filing the succession proceedings. The objector failed to discharge that burden. The objector further alleged that the petitioner had failed to disclose to court that the objector’s grandmother, Jerioth Nyawira Kihara, deceased had left an oral will bequeathing to him the portion due to the deceased. Again, the objector miserably failed to

establish those allegations. The last allegation made by the objector is that the petitioner falsely stated that she was a creditor. I have perused the affidavit filed in support of the petition for letters of administration intestate and it's clear that the petitioner did not allege that she was a creditor. In fact she clearly stated that she was taking out the proceedings in her capacity as a sister-in-law.

In the end I see no merit in the summons for revocation and on annulment of grant. The same is ordered dismissed with costs to the petitioner.

Dated and delivered this 14 day of May 2010.

J.K. SERGON

JUDGE