



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Succession Cause 81 of 1980**

IN THE MATTER OF THE ESTATE OF SIMON MUTUNGA (DECEASED)

STEPHEN KIBITI APPLICANT

VERSUS

JACOB RIUNGU MUTUNGA1ST RESPONDENT

JOHN MUTHAMIA 2ND RESPONDENT

PETER KIMATHI MUTUNGA 3RD RESPONDENT

ELIZABETH GACHORO4TH RESPONDENT

JUDGMENT

This succession was concluded in February 1981 when the court distributed parcel number *Nthimbiri/Igoki/106* amongst the deceased beneficiaries. Stephen Kibiti Mutunga one of the beneficiaries who got a share of that property filed a chamber summons dated 28th February 2003 some 21 years later after distribution. He sought to review that distribution. Justice Emukule by his ruling dated 8th December 2008 made findings which to date have not been appealed against. I can do no better than reproduce part of that ruling as follows:-

“As already stated, all the beneficiaries were present, it was a consent order. Where however parties or the beneficiaries agree or consent to the distribution of the estate, then the court will order distribution of the estate in terms of the agreement or consent of the beneficiaries. That is what happened on 4th February 1981, and it is both pertinent and contentious of the court for the applicant to insinuate that the court was misled is baseless and the application for those reasons I would dismiss the applicant’s summons of 28th February 2003. Finally, over a period of 22 or more years each of the beneficiaries has developed his portion of the estate, and has procured or ought to have procured individual title, and if he has not done so, should do so without undue delay, it would be improper and prejudicial to the distribution with a new distribution (sic).”

That application for review on being dismissed Stephen has again approached this court with a summons dated 4th January 2009 seeking the revocation of grant on the basis that it was obtained by fraud and by making false statements. Stephen relied on the ground he had relied in the dismissed application. That is, he relied on a ground that the petitioner petitioned for grant secretly and on the ground that there was no consent on distribution. The first respondent in the replying affidavit annexed photographs of each beneficiary’s homestead. That is those who obtained land in this succession. Looking at those photographs, some of the houses shown are permanent buildings. It is clear from those photographs that each beneficiary has extensively developed their portions of land. That is not strange considering that the parties have been in occupation to their respective portions for more than 21 years. In considering the application by Stephen, it becomes clear that there ought to be limits placed on the right of a party seeking to re-open certain matters. This is certainly one of such matters. Additionally, to entertain the application by Stephen for revocation would be to consider the same issues that are considered by Justice

Emukule by his ruling of 8th December 2008. The application dated 12th January 2009 is without merit and is dismissed with costs being awarded to Jacob Riungu Mutunga to be paid by Stephen Kibiti Mutunga.

Dated and delivered at Meru this 7th day of May 2010.

MARY KASANGO
JUDGE