

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 345 of 2002

IN THE MATTER OF THE ESTATE OF JOSEPH MUGAMBI KANYONI – DECEASED
PETERSON KIRAGU MUGAMBI.....APPLICANT

VERSUS

JOSEPH MUNUHE KAMITHA.....RESPONDENT

JUDGMENT

The subject matter of this ruling is the summons for Revocation of Grant dated 2nd July 2009 taken out by PETERSON KIRAGU MUGAMBI, the applicant herein. In the aforesaid summons, the Applicant is praying for the grant of representation given to JOSEPH MUNUHE KAMITHA, the Respondent herein, on the 4th day of April, 2005 to be revoked. It is alleged that the same was obtained on the basis of defective proceedings and by the making of a false statement. It is further alleged that the Respondent concealed material facts from the court. In his affidavit filed in support of the summons, the Applicant alleges that he and his siblings were not named in succession proceedings as having survived the deceased. The Applicant further deponed that the Respondent concealed from court that he had been ordered to vacate the deceased's parcel of land vide NYERI H.C.C.C. NO. 60 OF 1987. The Applicant averred that he only came to know about the existence of these proceedings during the hearing of NYERI C.M.C.CR.CASE NO. 960 OF 2008. For the above reasons the Applicant urged this court to issue an order revoking the grant.

In response to the aforesaid summons the Respondent filed a Replying Affidavit he swore to oppose the same. He averred that before he filed the succession proceedings, he first filed citation proceedings. The citation is said to have been served upon NELSON NYAMU MUGAMBI, one of the beneficiaries of the deceased's estate. The Respondent claimed he even served the summons for Confirmation of Grant upon the aforesaid beneficiary. It is said it was his duty to name the other beneficiaries. The Respondent averred that he had disclosed to the court of the existence of NYERI H.C.C.C. NO. 60 OF 1987.

I have considered the grounds set out on the face of the Summons for Revocation of Grant. I have also taken into account the averments contained in the affidavits filed for and against the application. I have further considered the written submissions filed herein. It is conceded by the Respondent that he did not list the names of the Applicant herein as a beneficiary both in the citation and in the application for the grant. In the application for the grant, he stated he was a purchaser of the parcel of land known as **L.R. NO. NYERI/WARAZO/67**. The evidence tendered before this Court in respect of the purchase of the aforesaid land appears to be scanty. I have already stated that the Respondent represented himself to this court when seeking to succeed the late Joseph Mugambi Kanyoni as a purchaser of part of the parcel of land known as L.R. NO. NYERI/WARAZO/67. It has now emerged that the Respondent was not the actual purchaser of the aforesaid land. His claim against the deceased's Estate is based on an alleged agreement entered between his late father, Elijah Kamitha and the deceased in 1973. It is obvious that the Respondent misrepresented facts to this court. It is also apparent from the succession cause that the Respondent did not disclose the existence of NYERI H.C.C.C. NO. 60 OF 1987. I am convinced the summons for Revocation of Grant dated 2nd July 2009, meets the threshold set under *Section 76* of the Law of Succession Act. In short, the Respondent is guilty of material non-disclosure of facts relevant to the succession cause. The Respondent made a false statement that he was a purchaser yet the evidence tendered shows that he was pursuing a sale transaction which was conducted by his late father. In the circumstances, he cannot be regarded as a purchaser by any stretch of imagination. In the end, I find the Summons for Revocation of Grant dated 2nd July 2009 to be well founded. It is allowed as prayed.

Dated and delivered at Nyeri this 18th day of June 2010.

J. K. SERGON

JUDGE

Delivered in open court in the presence of Mr. Mugo for the Applicant and the Respondent in person.