



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 326 of 2006

**IN THE MATTER OF THE ESTATE OF MURIUKI MURIITHI ALIAS
MURIUKI S/O MURIITHI – DECEASED**

KAHU GATHUMBIYA.....APPLICANT

VERSUS

LUCY KAGURE GITAHURESPONDENTS

MARTHA NYAGAKI MATHENGE

JUDGMENT

KAHU GATHUMBIYA, hereinafter referred to as the “Applicant”, filed the Summons for Revocation of Grant dated 15th October 2008 in which he applied for the Grant of Letters of Administration intestate of the Estate of Muriuki s/o Muriithi, deceased, issued to **LUCY KAGURE GITAHU** on 9th May 2008, to be revoked and or annulled. When served with the application, Lucy Kagure Gitahi and Martha Nyagaki Mathenge hereinafter referred to as the “Respondents” each filed a replying affidavit to oppose the same. This court gave directions for the application to be determined by oral evidence.

The Applicant tendered his evidence plus the evidence of another independent witness in support of his case. **KAHU GATHUMBIYA** (P.W. 1) told this court that the deceased was his uncle while the Respondents were his sisters. He claimed that he successfully applied for a Grant of Letters of Administration intestate in respect of the Estate of Muriuki s/o Muriithi, deceased, vide **NYERI H.C. SUCCESSION CAUSE NO. 320 OF 2006** without involving the Respondents. He produced a copy of the certificate of Confirmation of Grant indicating that he was to inherit absolutely the parcel of land known as **L.R. NO. THEGENGE/KARIA/480**. P. W. 1 stated that he was not aware that he had represented himself as the deceased’s brother when applying for the Grant of Letters of Administration. P. W. 1 averred that he did not involve the Respondents in the succession proceedings because they were not available and that they were already married hence they were not entitled to inherit the deceased’s Estate. P. W. 1 admitted that he is aware that **L. R. NO. THEGENGE/KARIA/480** was transmitted to the Respondents vide **NYERI H.C. SUCCESSION CAUSE NO. 326 OF 2006**. He produced the official search to establish that piece of evidence. He has asked this court to revoke that grant because the Respondents did not involve him in **NYERI H.C. SUCCESSION CAUSE NO. 326 OF 2006** yet they were aware that he was in occupation of the land in dispute. He claimed he was not aware that the Respondents were interested in inheriting their deceased’s brother’s estate. **SAMUEL MAGONDU** (P.W.2) told this court that he knew the deceased gave his land to the Applicant and that he has been in occupation until recently when the Respondents came into occupation. The Respondents tendered the evidence of Martha Nyagaki Mathenge (D. W. 1) who told this court that they were entitled to succeed their late brother since they ranked in priority as against the Applicant who was a nephew to

the deceased. D. W. 1 claimed that Lucy Kagure was not married and that the deceased had put up a house for her on the suit land. D. W. 1 further alleged that the Applicant has never cultivated the land in question. She averred that she informed the Applicant of the Respondents' intention of succeeding their deceased brother.

At the end of the evidence, parties were granted leave to file written submissions. I have considered the evidence and those submissions. The main issue which this court must determine is whether or not the Summons for Revocation of Grant meets the threshold required by law. It suffices to reproduce the provisions of *Section 76* of the Law of Succession Act in order for one to discover the grounds to be established in order to sail in such an application. *Section 76* provides as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion:-

- (a) that the proceedings to obtain the grant were defective in substance;***
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;***
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either:-***
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or***
 - (ii) to proceed diligently with the administration of the estate; or***
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or***
- (e) that the grant has become useless and inoperative through subsequent circumstances.”***

It is the submission of the Applicant that the Respondents concealed from court the fact that he was in occupation. It is his view that they breached *Section 76 (a)* of the Law of Succession Act. I have perused the file relating to the **NYERI H. C. SUCC. CAUSE NO. 320 OF 2006**. It is clear that the Applicant herein had petitioned for Letters of Administration intestate in respect of the estate of Muriuki s/o Muriithi, deceased, in his capacity as a brother to the deceased. In the affidavit filed in support, the Applicant deponed that he was filing the application in his capacity as the deceased's brother. He named himself as the only person who survived the deceased. The court granted him the Letters of Administration and confirmed the same on 15th June 2007. The Respondents herein filed the Summons for Revocation of Grant dated 21st November 2008 in which they applied for the confirmed grant to be revoked because the Applicant had concealed certain facts material to the case. It is alleged that the Applicant had concealed the fact that the deceased was survived by the Respondents. The Applicant was also accused of misrepresenting himself as the deceased's brother yet he was a nephew. In his response, the Applicant admitted that he inadvertently misled the court when he stated that he filed the petition for Letters of Administration in his capacity as a brother. He did not, however, respond to the allegation that he intentionally failed to state that the deceased was survived by two sisters, the Respondents herein. I have carefully perused the various affidavits filed by the Respondents and it is clear that they are all silent as to whether or not the Applicant is in occupation of the suit land. The Applicant did not involve the respondents in his application for grant (i.e. in NYERI H.C.S.C. NO. 320 OF 2006). He is equally guilty for material non-disclosure. He has now come to this court to accuse the Respondents of the same vice. I doubt whether the Respondents were bound by law to disclose the Applicant's interest as an occupant. The Respondents rank on priority to succeed the deceased as against the Applicant. In any case if the Applicant's claim is based on a long period of occupation, his claim if well advised lies elsewhere and not through these proceedings. Furthermore the Applicant was not being candid to this court from the beginning. I am unable to believe his evidence. Having come to the conclusion that the Respondents were not bound to

disclose to the Applicant that they were to file succession proceedings to succeed their brother nor the application for long occupation on the suit premises, I find the Summons for Revocation of Grant to be without merit. The same is ordered dismissed with costs to the Respondents.

Dated and delivered at Nyeri this 11th day of June 2010.

J. K. SERGON

JUDGE

In open court in the presence of Kiminda for Applicant and Mr. Macharia for Respondent.