



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI Succession Cause 307 of 2003**

**IN THE MATTER OF THE ESTATE OF WACHIRA GITHIOMI– DECEASED**

**JOHNSON KIRAGU WACHIRA.....APPLICANT**  
**VERSUS**  
**DANIEL MAINA MURUGI.....1<sup>ST</sup> RESPONDENT**  
**ALI NDIRITU NJOROGE.....2<sup>ND</sup> RESPONDENT**

**RULING**

**JOHN KIRAGU WACHIRA**, hereinafter referred to as the Applicant, applied for the Grant of Letters of Administration issued to **DANIEL MAINA MURUGI** and **ALI NDIRITU NJOROGE** hereinafter referred to as the “Respondents”, dated 7<sup>th</sup> October 2008 in respect of the Estate of Wachira Githiomi, deceased to be revoked. The application is dated 3<sup>rd</sup> May 2010 and is supported by the affidavit of the Applicant. The Respondent each filed a replying affidavit to contest the Summons.

I have considered the grounds set out on the face of the Summons and the facts deponed in the affidavits for and against the Summons. It is the submission of the Applicant that the grant should be revoked for the following reasons:  
First, that the grant was made on the basis of a false statement regarding the beneficiaries who according to him are strangers to the Estate. According to the Applicant, he is the only surviving heir of the deceased. The Applicant has averred that **DANIEL MAINA MURUGI**, the 1<sup>st</sup> Respondent herein, is a grandson to the deceased whereas **ALI NDIRITU NJOROGE**, 2<sup>nd</sup> Respondent herein is a nephew to the deceased. Asuman Ngugi, one of the beneficiaries, is said to be a brother to the 2<sup>nd</sup> Respondent, hence a nephew to the deceased whereas Esther Wangui Njogu is said to be a sister-in-law to the deceased. Said Salim is said to be a stranger. The Applicant urged this Court to find that the Respondents and the other beneficiaries misrepresented themselves as genuine beneficiaries of the deceased’s Estate yet they are strangers. The Applicant conceded that the certificate of the confirmed grant has been executed to the extent that **L.R. NO. MAHIGA/KIHOME/391** has

been closed upon sub-division giving rise to six sub-divisions i.e. **L.R.NO. MAHIGA/KIHOME/1501-1506**. The Applicant alleged that he has been in exclusive possession and use of **L.R.NO. MAHIGA/KIHOME/391** until the Respondents and the other beneficiaries smoked him out with his family on 26<sup>th</sup> April 2010.

Secondly, that the grant was obtained by means of an untrue allegation of facts essential to justify the revocation of grant.

The 1<sup>st</sup> Respondent on his part claimed he diligently proceeded with the administration of the deceased's Estate to the extent that distribution is complete. He claimed he transferred a share of the deceased's Estate to the Applicant. He alleged that the Applicant is unhappy because he wanted to be given more than what he received. The 1<sup>st</sup> Respondent termed the Applicant's application to be frivolous and vexatious. Ali Ndiritu Njoroge, the 2<sup>nd</sup> Respondent admitted that the Applicant is a son of Wachira Githiomi, deceased. He claimed that the deceased was his uncle (brother to his father) who held the land in dispute in trust for himself and his other brothers. He said the Respondents and the Applicant are cousins hence they are entitled to share in equal measures the land in dispute. He denied having fraudulently obtained the grant.

Having considered the rival averments, it is now clear that the allegations raised by the Applicant regarding the relationship of the Respondents to the Estate have not been controverted. The aforesaid facts were disclosed by the Respondents when applying for the grant and during the confirmation of the grant. On the face of the certificate of confirmation of grant the relationship of the Respondent and other beneficiaries is stated. The Applicant has averred that he has been rendered a destitute but the record shows that he was awarded two (2) acres of the suit land. In sum I find the Applicant's application to be without merit. The Applicant has miserably failed to prove his allegations to justify the revocation and or annulment of the grant. The application is dismissed with no order as to costs since the dispute involves close relatives.

***Dated and delivered at Nyeri this 9<sup>th</sup> day of July 2010***

**J. K. SERGON**

**JUDGE**

In open court in the presence of Kariuki for 1<sup>st</sup> Respondent, 2<sup>nd</sup> Respondent in person. No appearance for C. N. Kingori for applicant.