

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 1662 of 1993

**IN THE MATTER OF THE ESTATE OF SIMON MUNGAI MUTITI – DECEASED
WILLIAM MBURU MUNGAI APPLICANT/OBJECTOR
V E R S U S
BETHA WANJIRU MUNGAIRESPONDENT/PETITIONER
R U L I N G**

The grant in this estate of Simon Mungai Mutiti was issued on 11th January, 1994 to the Respondent and confirmed on 29th July, 1994. The estate contained various parcels of land which were ordered to be registered in the Respondent's name and thereafter in equal shares to her children.

On 26th August, 2010 the Applicant sought under **section 70** of the **Law of Succession Act (Cap. 160)** to have the grant revoked and/or annulled on basis that the same was obtained by concealment of the material fact that he was a beneficiary of the estate, that he was not informed of the proceedings and that there was misrepresentation of material facts. In the supporting affidavit, the Applicant deponed that his father Mungai Mutiti Chege (who died on 8th May 2007) was brother to the deceased herein; that the deceased was registered as a trustee of the properties listed in the grant. However, it is deponed, the property has now gone to the Respondent and children to the exclusion of the family of the late Mungai Mutiti Chege who include the Applicant. The family feels disinherited when, it is stated, they were meant to share in the properties.

The response by the Respondent was that the late Mungai Mutiti Chege participated in the succession cause as surety of the Respondent when she was applying for letters of administration and even signed P & A 57. She further deponed that the application was incompetent, vexatious and abuse of process. Mr. Mwaniki for the Respondent submitted that in so far as the Applicant was not the administrator of his father's estate he had no locus to bring the application.

The Applicant seeks to benefit from the estate through his late father whom he says was a beneficiary of the said trust. Upon the death of his father, the Applicant needed to take out letters to be able to pursue any claim relating to the estate. Since he has not taken out letters he lacks the capacity to make the present claim seeking to revoke or annul the grant to the Respondent. Secondly, his father signed P & A 57 to the Respondent in this Cause and therefore the claim that they were kept out of the proceedings is without basis. The Applicant's father had the opportunity to pursue whatever claim he had to the estate but did not.

In short, the application is not only incompetent but also lacks merits. It is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI
THIS 21ST DAY OF OCTOBER 2010**

**A. O. MUCHELULE
J U D G E**