



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.2795 OF 2003**  
**IN THE MATTER OF THE ESTATE OF PAUL NG'ANG'A GATHATA – (DECEASED)**

**AMOS KIMANI NG'ANG'A.....**

**....APPLICANT**

**VERSUS**

**STANLEY KIRATU NG'ANG'A.....1<sup>ST</sup> RESPONDENT**

**DAMARIS NJOKI WAINAINA.....2<sup>ND</sup> RESPONDENT**

**RULING**

The applicant and the respondents are the administrators of the estate of Paul Ng'ang'a Gathata (deceased). They were issued with letters of administration in respect of the estate of the deceased on 24<sup>th</sup> October 2005. On 16<sup>th</sup> August 2007, the respondents made an application seeking to have the said letters of administration confirmed. Apparently, the respondents sought the said confirmation of grant without seeking the consent of the applicant. The said letters of administration were confirmed on 17<sup>th</sup> December 2007. Upon discovering that the letters of administration had been confirmed without his consent, the applicant did on 13<sup>th</sup> August 2008 make an application seeking the revocation of the confirmation of grant. In particular, the applicant stated that the respondent had fraudulently concealed the fact that he had purchased one (1) acre from the deceased out of the parcel of land known as Githunguri/Giathieko/226 (the suit property). In their proposal regarding the distribution of the suit property, the respondent had stated that the suit property should be equally distributed between the applicant and the respondents. The application was considered by Dulu J. In his ruling delivered on 26<sup>th</sup> April 2010, the learned judge agreed with the applicant that the distribution of the estate of the deceased ought to be reconsidered. In page 2 of his ruling, the learned judge stated as follows:

“In my view, this application for revocation of grant is merely for reasons challenging the distribution. It is not possible for the court to consider the contest on whether or not the applicant/objector actually bought the one acre from the deceased unless the confirmation of grant is revoked. That is the only way the matter can be reopened and parties heard for proper consideration. I will therefore revoke the confirmation of grant, and retain the grant of presentation, in order to allow parties a chance to canvass the issue in dispute for a decision to be made by the court.”

It is apparent that by the time the court issued the said order, the respondent had used the confirmation of grant to secure the sub-division of the suit property into three parcels of land, namely, Githunguri/Giathieko/435,436 & 437. Titles in respect of the said sub-divided portions have been issued to the beneficiaries proposed by the respondent in the confirmation of grant.

On 23<sup>rd</sup> June 2006, the applicant invoked the inherent jurisdiction of this court seeking an order cancelling the titles that were issued in respect of the sub-divided portions of the suit property on account of the fact that the confirmation of grant upon which the sub-division of the suit property was secured had been revoked by the court. The applicant further prayed that the District Land Registrar Kiambu be ordered to effect the changes in the register in respect of the title of the suit property. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the applicant. The application is opposed. The 1<sup>st</sup> respondent filed a replying affidavit in opposition to application.

Counsel for the parties to the application agreed by consent to file written submissions in support of their clients' respective opposing positions. The said counsel agreed that the court would write its ruling on the basis of the said written submissions. I have read the pleadings filed by the parties herein in support of their respective opposing positions. I have considered the written submissions filed in respect of the said application. The issue for determination is whether the applicant established sufficient grounds for this court to invoke its inherent jurisdiction to cancel the titles that were issued in respect of the sub-divided portions of the suit property. As stated earlier in this ruling, it was clear that the sub-division of the suit property was achieved pursuant to the confirmation of grant which has now been revoked. The main reason why the respondents opposed the application is that the applicant cannot establish his claim to be granted one (1) acre out of the suit property because his claim was barred by statute. The respondents further argued that since the consent of the Land Control Board had not been obtained at the time of the

sale of the suit property, the applicant's claim cannot be upheld by this court. With the greatest respect to the respondents, they are putting the cart before the horse. The respondents are purporting to argue their case before the scheduled time. The issue before the court is whether the respondents can acquire a benefit from a certificate of confirmation of grant which has been revoked. The answer to the question does not require a rocket scientist. If the certificate of confirmation of grant which the respondents secured the sub-division of the suit property has been revoked, it naturally follows that the sub-division of the suit property and the subsequent titles issued in respect of the sub-divided portions of the suit property cannot stand.

In the premises therefore, this court will allow the applicant's application. The titles issued in respect of the sub-divided portions of the suit property, namely, Githunguri/Giathieko/435, 436 & 437 are hereby cancelled. The sub-division of the suit property into three portions of land is similarly cancelled. The suit property shall revert back to its original parcel number i.e. Githunguri/Giathieko/226. The said parcel of land shall revert to the name of the deceased, Paul Ng'ang'a Gathata. The Land Registrar Kiambu is ordered to give effect to the order of this court. The applicant shall have the costs of this application.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2010**

**L. KIMARU  
JUDGE**