



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO.574 OF 2007

IN THE MATTER OF ESTATE OF MWANGI NJOGU.....  
.....DECEASED

AND

ELIUD MURIITHI MWANGI .....  
PETITIONER

VERSUS

SERAH NJERI MWANGI .....  
OBJECTOR

RULING

A grant of letters of administration intestate in respect of the estate of Mwangi Njogu, deceased was made to Eliud Muriithi Mwangi (Petitioner) on 21<sup>st</sup> November 2006 and confirmed on 18<sup>th</sup> May 2007 by the Principal Magistrate's court, Murang'a. Serah Njeri Mwangi (objector) took out the summons for revocation or annulment of grant dated 1<sup>st</sup> October 2007 in which she applied for the grant issued to the Petitioner to be revoked and or annulled on the ground:

***“That the grant was obtained fraudulently and by the making of a false statement and or concealment of facts material to the case.”***

The objector filed an affidavit to support the summons.

The Petitioner did not file any response to the summons for revocation and or annulment of grant.

I have carefully perused the record and I am unable to find any evidence that the application was served upon the Petitioner. What was served upon the petitioner was the summons dated 26<sup>th</sup> November 2007 in which the objector had applied for an order for stay of execution of the certificate of the confirmed grant. It would appear the aforesaid application was dismissed by the Honourable Mr. Justice Makhandia on 11<sup>th</sup> May 2009 for want of attendance on the part of the objector/applicant. When this matter came up for direction before me on 20<sup>th</sup> May 2010, Mr. Kirubi learned advocate for the Objector successfully urged this court to direct that the dispute be determined by affidavit evidence and by written submissions. It was incumbent upon the learned advocate to show this court that the summons for revocation and or annulment of grant had been served. I am not satisfied that the same was served and in any case there is no evidence that the objector applied for the initial directions on who to serve the application. The record shows that the file was only active in respect of the summons dated 26<sup>th</sup> November 2007. Having come to the conclusion that the summons for revocation and or annulment of grant dated 4<sup>th</sup> October 2007 was not served and that the Objector and her legal advisor did not disclose that fact to this court, I am of the view that the cause proceeded for hearing exparte. I hereby set aside the order of directions given on 16<sup>th</sup> July 2010 and the exparte proceedings taken on 1<sup>st</sup> October 2010. I direct the Objector to serve the summons for revocation and or annulment of grant dated 4<sup>th</sup> October 2007 upon all the beneficiaries named in the certificate of confirmation of grant dated 18<sup>th</sup> May 2007.

Dated and delivered this 25<sup>th</sup> day of November 2010.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Mutiso holding brief Kirubi for Applicant Kingori holding brief Macharia.