



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 661 OF 2009

IN THE MATTER OF THE ESTATE OF SIMON KINYUA KIRAGU – DECEASED

PETER CHEGE KINYUA.....1ST APPLICANT
JOSEPH KIBUNJA KINYUA.....2ND APPLICANT

VERSUS

MARION RUGURU KINYUA.....1ST RESPONDENT
SARAH WAMBUI KINYUA.....2ND RESPONDENT

JUDGMENT

This judgment is the outcome of the Summons for revocation and or annulment of grant dated 17th July 2009 in which Peter Chege Kinyua and Joseph Kibunja Kinyua, the 1st and 2nd applicants herein, prayed to be given the following orders:

1. ***The grant and confirmed grant made on 26th August 2008 be revoked and/or annulled on the grounds that:-***

(a) The lower court had no jurisdiction to entertain the matter in view of the provisions of section 47 and 48 of the Law of Succession Act Chapter 160 Laws of Kenya.

(b) The proceedings to obtain grant and confirmation of grant were defective in substance.

(c) The grant and the confirmed grant was obtained fraudulently by making of a false statement or by concealment from the court that the state of the deceased should have been shared according to the number of surviving children line with the provisions of the Law of Succession Act.

The Summons is supported by the joint affidavit of both applicants. Marion Ruguru Kinyua and Sarah Wambui Kinyua, the 1st and 2nd Respondents herein, swore a joint replying affidavit in which they opposed the Summons. This court gave directions which were to the effect that the Summons be disposed by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the Summons and the facts deponed in the affidavit filed in support and against the application. The history of this dispute started when Marion Ruguru Kinyua, the 1st Respondent, applied for letters of administration intestate in respect of the Estate of Simon

Kinyua Kiragu, deceased vide Kigumo **S.R.M.C. SUCCESSION CAUSE NO. 72 OF 2007**. There is evidence that Joseph Kibunja Kinyua, the 2nd Applicant gave consent to the 1st respondent to obtain the foresaid letters on 19th November 2007. The 1st Respondent was finally granted the aforesaid letters on 14th December 2007. Thereafter, the 1st respondent applied for the grant to be confirmed vide the Summons dated 20th June 2008 in which she proposed to distribute the deceased's Estate in the following manner:

- (i) Sarah Wambui Kinyua – to inherit LOC. 2/MARIIRA/2149.
- (ii) Marion Ruguru Kinyua – To inherit LOC. 2/KANGARI/1781.

The grant was confirmed as prayed in the aforesaid summons for confirmation of grant. When the Applicants learnt of what happened they filed the Summons dated 20th November 2008 in which they sought for *inter alia* the certificate of confirmation of grant to be set aside by an order of review. That application is still pending before the subordinate court. It would appear the applicants realized they may not go far in the aforesaid application thus they opted to file the current summons for revocation and or annulment of grant, the subject matter of this judgement. The main issue raised in the Summons is that the subordinate court did not have the pecuniary jurisdiction to entertain the Succession proceedings since the value of the Estate was way beyond Ksh.100,000/=. It would appear the respondents are conceding to the aforesaid objection save that they say that it should have been raised early enough before the trial court. The Respondents are indirectly stating that the Applicants submitted themselves to the jurisdiction of the subordinate court when they failed to raise the objection on jurisdiction. That, in my view, cannot be the correct position in law. Parties cannot consent to confer the court jurisdiction when the law is quite explicit. The parties to this dispute were before a court which had no pecuniary jurisdiction to hear and determine their cause. Under *Section 48* of Law of Succession Act the Magistrate's Court is only permitted to entertain succession proceedings whose asset value is Ksh.100,000 and below. The asset value of this Estate is stated to be Ksh.200,000/=. This court, even without the prompting of the Applicants would still have revoked the grant on this ground alone. I am convinced the ground has been properly established and on that basis I allow the summons for revocation and or annulment of grant dated 17th July 2009 as prayed. Since the dispute involves members of the same family, I direct that each party meets his or her own costs.

Dated and delivered at Nyeri this 19th day of November 2010.

J. K. SERGON

JUDGE

In open court in the presence of the parties but with notice.