



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 283 OF 2010

IN THE MATTER OF THE ESTATE OF MUIRU WACHIRA – DECEASED

FREDRICK WACHIRA MUIRU.....APPLICANT

Versus

SARAH WANGARI MUIRU.....RESPONDENT

JUDGMENT

This judgment is the offshoot of the Summons for revocation and annulment of grant dated 10th March 2010, taken out by **Fredrick Wachira Muiru** hereinafter referred to as “the applicant”. The summons is taken out pursuant to the provisions of *Section 76* of the Law of Succession Act and *Rules 44* and *73* of the Probate and Administration rules. In the aforesaid Summons the Applicant sought for an order that the letters of administration issued to **FREDRICK WACHIRA MUIRU** and **SARAH WANGARI MUIRU** made on 17th Day of March 2004 be revoked or annulled.

The Summons is supported by the affidavit of the Applicant. **Sarah Wangari Muiru**, hereinafter referred to as “the respondent” opposed the Summons by filing a replying affidavit she swore on 11th May 2010. When the summons came up for hearing, learned counsels recorded a consent order to have the Summons determined by affidavit evidence and by written submissions.

I have considered the written submissions and the grounds set out on the face of the Summons for revocation and or annulment of grant plus the facts deponed in the affidavits filed for and against the summons. It is the submission of the Applicant that the Respondent applied for a grant of letters of administration in respect of the Estate of Muiru Wachira, deceased without his knowledge. According to him, the respondent’s conduct in that respect amounts to being fraudulent. The Applicant further pointed out the acts of the Respondent which the Applicant stated to be fraudulent acts on the Respondent’s part to include:

- that the Respondent did not serve the Petition upon him.
- That the Respondent forged the consent forms of the Applicant and purported that the Applicant had accepted the mode of distribution of the Estate.

- That the Respondent relied on a forged death certificate.
- That the Respondent included people who are strangers to the deceased's Estate as beneficiaries.

As expected, the Respondent denied the Applicant's allegations in her replying affidavit. The Respondent is of the view that the application lacks merit in that the grant was issued in their joint names by their consent and their advocates. It is alleged that the Applicant rushed to file the current application when he was served with the application for confirmation of grant ostensibly to delay the distribution of the Estate. The Respondent alleged that she was forced to apply for letters of administration when the Applicant failed to respond to her citation.

I have considered the rival submissions and the material placed before me. There is no dispute that the Applicant and the Respondent are children of the late Muiru Wachira. The respondent appears to have cited the Applicant to indicate whether or not he was interested to take up letters of administration intestate in respect of the Estate of Muiru Wachira, deceased, vide Kangema **R.M.C. SUCCESSION CAUSE NO. 35 OF 2003**. There is evidence that the Applicant entered an appearance to the citation on 30th July 2003 upon receipt of the citation dated 7th July 2003. The Applicant has raised two crucial grounds which are recognized under *Section 76* of the Law of Succession Act. First, it is alleged that the Respondent used a forged death certificate whereas the Applicant had a genuine death certificate. I must confess that it is difficult to determine the issue because each of them is claiming to have obtained a genuine death certificate because the parties have not been interrogated as to how each obtained the death certificate in their possession. It is also necessary to know whether or not the other had knowledge that the other had already obtained a death certificate. The Applicant avers that he obtained his on 7th August 2000. He does not state whether he had informed his sister that he had already obtained the death certificate. The Applicant has therefore failed to establish that the respondent forged the death certificate. The second ground raised and argued by the Applicant is that the Respondent relied on forged consent forms signed on behalf of the applicant purporting to have been signed by the Applicant in agreement with the mode of distribution. In my view if this ground is true, then I think it has been prematurely raised because it relates to the Summons for Confirmation of Grant which is yet to be heard and determined by the Kangema Resident Magistrate's Court. The Applicant in any case will have a chance to argue the issue in protest against the confirmation of grant. The third issue raised is that the respondent has included strangers in her schedule of distribution as beneficiaries of the deceased's Estate. With respect, this ground will suffer the same fate as the second ground. In a nutshell, the Applicant will have ample time and opportunity to raise the issue while protesting against the confirmation of grant before the Kangema Resident Magistrate's Court.

In the end I see no merit in the summons for revocation and or annulment of grant dated 10th march 2010. The same is ordered dismissed with each party meeting his or her own costs in view of the fact that the combatants are a sister and a brother.

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

J. K. SERGON

JUDGE

Macharia holding brief Kagwi for Respondent. Ng'ang'a holding brief E. K. Njagi for Applicants.