

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Miscellaneous Application 86 of 2003

DOMINIC GACHIANI KARIMI.....APPLICANTS

Versus

JOYCE WANGU MWAI & 4 OTHERS.....DEFENDANTS

RULING

Dominic Karimi Gachiani, the applicant herein, took out the summons for revocation of grant dated 29th April 2003 in which he applied for the grant of letters of administration in respect of the estate of Peter Gachiani Mwai, deceased issued to Joyce Wangu Mwai to be revoked. He filed an affidavit he swore in support of the summons. Joyce Wangu Mwai, Petitioner herein filed a replying affidavit to oppose the application. When the summons for annulment of grant came up for directions, learned counsels appearing in the dispute agreed to have the application determined by the filing of written submissions.

I have considered the grounds set out on the face of the summons for revocation of grant plus the facts deponed in the affidavits filed for and against the application. I have further taken into account the written submissions and the case law cited by learned counsels from both sides. Basically, Dominic Karimi Gachiani seeks to have the certificate of confirmation grant given to Joyce Wangu Mwai on 27th day of December 1998 to be revoked on the following reasons:

First, that petitioner made a false statement and concealment of material facts to have the grant confirmed. It is alleged that the petitioner failed to disclose the fact that the applicant herein has been in occupation of half of the parcel of land known as Inoi/Thaita/136 for over 35 years. Secondly, it is further alleged that the petitioner failed to disclose the fact that the applicant and the deceased had previously litigated over the aforesaid parcel of land in which the panel of elders ruled that the deceased do share the land equally. It is alleged by the applicant that the elders' award was pending adoption before the Principal Magistrate's Court, Nyeri vide P.M.C.C.C. No. 31 of 1989.

The Petitioner on her part opposed the application on the basis that the applicant was not a beneficiary to the estate of the late Peter Gachiani Mwai: She however acknowledged the fact that the applicant was a step-brother to the late Peter Gachiani Mwai. She denied having concealed any material fact from the court that would justify the revocation of the grant. The petitioner denied the allegation that the applicant and the deceased had jointly purchased the parcel of land known as Inoi/Thaita/136. The petitioner further denies the allegation that the applicant has been in occupation of the suit premises.

The issue which has been left for this court to decide is whether the petitioner concealed material facts from the court when she applied for the grant of the letters of administration to be confirmed. The petitioner does not deny the allegation that she did not disclose the fact the applicant had lodged a claim of half the parcel of land known as Inoi/Thaita/136. She knew that the applicant had alleged that he had jointly bought the aforesaid parcel of land with the deceased.

As far as I can discern, it would appear the dispute between the applicant and the deceased was basically that of trust. The applicant is of the view that he contributed money to purchase half of the parcel of land known as Inoi/Thaita/136. It would appear the applicant is also alleging that that the deceased held half of the aforesaid parcel of land in trust for him. The petitioner has denied those allegations. After a careful consideration of the issues raised by applicant, I am not convinced that the petitioner was obliged to disclose those issues when filing these succession proceedings. At the time of

taking out letter of administration, title No. Inoi/Thaita/136 was in the name of Peter Gachiani Mwai, deceased. The register did not have any trust noted. The deceased got himself registered as the Proprietor of the aforesaid parcel of land on 6th December 1968. The applicant herein lodged a caution against the title on 28th July 1998, claiming beneficial interest. It would appear the applicant pursued his claim 30 years after title was issued. I am of the view that the applicant's remedy does not lie in these proceedings. If well advised his remedy lies elsewhere. I find that the petitioner did not commit any breach against the applicant that would justify the revocation of the grant. For the above reasons, the summons for revocation of grant dated 29th day of April 2003 is ordered dismissed with costs to the Petitioner.

Dated and delivered this 13th of October 2009.

J.K. SERGON

JUDGE

Miss Keli H/B Mwai for Petitioner/Respondent and Miss Mwangi H/B for Wangare for petitioner

J.K. SERGON

JUDGE