



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

MILIMANI LAW COURTS

Probate & Administration 831 of 2007

IN THE MATTER OF THE ESTATE OF WAMBUI KIARIES ALIAS MARGARET

WAMBUI KIARIES – (DECEASED)

PETER NG'ANG'A KIARIE..... APPLICANT

-V S-

CHARLES MBURU KIARIE..... RESPONDENT

RULING

This is an application by way of Chamber Summons dated 25th October, 2004. It is headed as an application for revocation or annulment of grant and confirmation of grant. It was purported to be filed under Rule 44 of the Probate and Administration Rules. The orders sought are as follows-

1. THAT the letters of Administration re issued on 8th

January, 201 and confirmed on 12th June, 2002 be revoked or annulled on the grounds set out in section 76(b) & (c) of the Law of Succession Act (Cap. 160 Laws of Kenya).

2. THAT the Honourable Court be pleased to issue a

court order to Murang'a district Land Registrar to cancel the illegally acquired title deed No. LOC. 4/GAKUI/918 by removing the names Charles Mburu Kiarie and reinstating in the Green Card Wambui Kiarie the original owner.

3. THAT costs of this application be provided for.

There are grounds on the face of the Summons. The application was filed with an affidavit sworn by the applicant Peter Ng'ang'a Kiarie on 26th October, 2004.

The application is vehemently opposed and a replying affidavit sworn on 4th December 2004 by Charles Mburu Kiarie the response was filed. Counsel for the applicant and the respondent also addressed me.

It does not appear in dispute that the respondent had indicted that he was the only beneficiary in the succession proceedings herein being challenged. It does not appear in dispute that other beneficiaries did not file consents to the appointment of an administrator; to the confirmation; and also to the distribution of assets. The respondent however contends that the beneficiaries knew of the proceedings but apparently did or chose not to participate. The respondent also contends that the applicant was guilty of delays in prosecuting the present application.

In my view, since the applicant did not disclose the names of other beneficiaries, the grant is for nullification. If he disclosed the names of the other beneficiaries, their consent would have to be obtained for and filed for appointment of the administrator; confirmation; and distribution. On that ground alone, I will have to revoke or nullify the grant as requested.

The applicant asks me to order that the subject land be registered in the name of the deceased. That appears to be a substantive order, which I will not make at the application for revocation stage. I can only grant, and will grant restraining orders with regard to dealing with the said plot.

Consequently, and for the above reasons, I order as follows-

1. *The letters of administration re-issued on 8th*

January, and confirmed on 12th June, 2002 be and are hereby revoked or annulled.

2. *I issue restraining orders against any dealing*

or disposal of land parcel No. LOC. 4/GAKUI/918 until this matter is resolved, or as may hereafter be determined by the court.

3. *Costs in the cause.*

Dated and delivered at Nairobi this 18th day of November, 2009.

George Dulu

Judge.

In the present of-

Mr. Njeru for applicant

David Court clerk.