



IN THE MATTER OF THE ESTATE OF NJOGU MURATHI-DECEASED

AND

MBUGI MURATHI.....APPLICANT

VERSUS

REGINA KARIUKO NJOGU.....RESPONDENT

JUDGMENT

Summons for Revocation of grant dated 23/4/2003 was filed by MBUGI MURATHI based on the two grounds:-

1. That the grant was obtained fraudulently by making false statement and concealment to the of something material to the cause
2. That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

The supporting affidavit shows that the applicant was a brother of the deceased. The grant for administration for the estate of the deceased was granted to Respondent and was thereafter confirmed. The applicant swears that as a brother of deceased he is entitled to share in his estate. The deceased was married to one wife, the Respondent and the deceased was survived by his wife and children and the applicant. The land left behind by deceased is Kabare/Njiku/5. Applicant filed a caution against the title on 19/1/1998. There is another piece of land Kabare/Nyangati/34/67. The details of survivors are stated in P& A Form filed on 15th January 2001. It is true that the Applicant is not included as one of the survivors. However he was a brother as he says and under Section 39 of the Succession Act the priority father, mother, brothers and sisters are referred to as kindred of the deceased. The applicant is not a survivor of deceased but a kindred. Therefore it is not false or untrue to omit his name since there were survivors to inherit assets of the deceased.

On the issue of notice of filing succession case the prescribed Gazette Notice was published to all the world and therefore it cannot be said that the matter was undertaken in secret.

It is confirmed by applicant that the land has been distributed among the widow and her children. That is what the law requires. Regarding the occupation of the land the respondent has denied this allegation and has disclosed that applicant has plot No. 56 Kimunye Market and some 5 acres in Laikipia District.

The deceased land Kabari/Njiku/5 was registered in his name in July 1958 and no trust is registered

against the title. Therefore this court does not find any evidence of the trust in favour or the applicant or any other person.

Upon considering all the issues raised by parties this court does not find any proof of the grounds alleged in the Summons to warrant the revocation of the grant issued and confirmed herein.

The application is dismissed with costs to the Respondent.

Dated this 24th January, 2008.

J. N. KHAMINWA

JUDGE

24/1/2008

Khaminwa – Judge

Njue – Clerk

Applicant and Respondent present

Judgment read in open court.

J. N. KHAMINWA

JUDGE