

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 137 of 2004

IN THE MATTER OF THE ESTATE OF NDIRANGU NGATIA *alias* NDIRANGU NGATIA
MUCHUNU

WILLIAM NGATIA NDIRANGU.....PETITIONER/APPLICANT

versus

MWANGI NGATIA.....OBJECTOR/RESPONDENT

RULING

The Petitioner petitioned for Letters of Administration as the only son of the deceased at Nyahururu Magistrate's Court. The grant was issued to him and was later confirmed. An application by way of summons for revocation was filed in this court by Mwangi Ngatia. That summons is dated 18th March 2004. The Petitioner has now moved this court through a summons dated 16th November 2007. By that summons he seeks the dismissal of the summons for revocation and for an order that the Nyahururu court file be returned for conclusion at that court. The petitioner stated in his affidavit that he had not been served with the summons for revocation. This he claimed was an attempt to deny him the right to defend himself. He concluded that the summons for revocation is meant to delay the finalization of the succession cause.

The application was opposed on behalf of Mwangi Ngatia. He stated that the summons was served on the Petitioner. He attributed the delay in fixing the matter with the delay of the Nyahururu court in forwarding their file. He prayed that the court would allow the hearing of the summons.

I have considered the argument before court and in the affidavit. I do accept that the issue raised by the summons for revocation is an issue that ought to be accorded a hearing. That however is not to mean the indolence of Mwangi Ngatia shall hence forth be ignored. I am of the view that the orders sought by the Petitioner should not be granted at this stage. This however does not mean that the Petitioner cannot again file such an application if there is continued delay by Ngatia. The orders that commend themselves to me are:

- 1. That the summons dated 16th November 2007 is hereby dismissed and the costs thereof shall be paid by Mwangi Ngatia to the Petitioner.***
- 2. The court grants directions in respect of the summons for revocation dated 18th March 2004 that the same be heard by way of viva voce evidence at a date to be taken at the registry.***

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY 2008.

MARY KASANGO

JUDGE