



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Misc Succ Cause 10 of 1999

TITUS GACHOKI SHEM.....APPLICANT

VERSUS

JULIA WANJIRU SHEM.....1ST PETITIONER

FRANCIS CHOMBA NYAGA.....2ND PETITIONER

SARAH WAGAKE SHEM.....3RD PETITIONER

RULING

Application dated 12/2/1999 seeks orders for revocation of the grant issued to Julia Wanjiru Shem and dated 7/3/1989 on the ground that the grant was obtained fraudulently by making a false statement on concealment of something material to the cause from the court and also that the grant was obtained by means of an 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 application is supported by affidavit of the applicant which shows that the grant was issued and confirmed on 23/5/1989 in Succession Case Number 22 of 1988 at Kerugoya. The applicant is the son of deceased entitled to inherit and the Petitioner filed the case without informing the applicant. The confirmation was done within 2 months not six months. Instead of filing revocation application, the applicants filed a **High Court Case No. 324 of 1994 in Nyeri High Court**. Thereafter the Petitioner filed a suit to evict the applicant from land Kabare Ngiroche/130 in which the applicant has resided since 1960 this was before the deceased death in 1987. The Respondents in this application is the petitioner Julia Wanjiru Shem, Sarah Wangake Shem and Francis Chomba the two being son and daughter of deceased. They filed a replying affidavit saying that the grant was confirmed and the estate was distributed to them. In the cause of the hearing of this matter the first Respondent Petitioner died on 16/8/1999 and before her death she had transferred parcel Number Kabare/Ngiroche/130 to Sarah Wangake she and Francis Chomba Shem.

The parties also gave oral evidence in court and produced Exhibits. The hearing commenced on 22/3/2007. In his evidence the plaintiff said the court to give him grant. He also said he was left out. On cross examination he said his names are Titus Gachoki Shem and that he was also known by the name of Gititu. He also said he is the son of deceased and that his father had two wives. He was not given any land while the children of other house were given in 1958. He admitted that he was convicted in Criminal Case No.634/2005 when he tried to get an Identity Card pretending his own had been lost thereby giving false information official in authority. Applicant witness confirmed that Titus Gachoki applicant was the

son of deceased. For Respondents Francis Chomba spoke and testified that they had employed the Applicant to do work on coffee. He was not their relative and in Kirinyaga Criminal Case No. 634/95 he was convicted. The Judgment was exhibited. The evidence was that he gave false information. Upon the examination of his finger prints the same were of Titus Gichira Mutira and not Titus Gachoki Shem DW1 confirmed that his father never married twice. There was also a case in Nyeri HCC No. 324 of 1994 where an order for eviction of the Applicant was issued. Exhibit 3 and SRM No. 81 of 1993 where a warrant to give possession was issued against the Applicant. The record shows that the orders issued to evict the Applicant from Plot No. Kabare/Ngiroche/130 were stayed pending the hearing of this case.

I have perused the record since 1988 through to 1999 and up to now several steps in litigation and proceedings have taken place between the parties. The record shows that the Applicant has been convicted in a criminal court for giving false information about his name. This is material evidence in this case. However the court is not satisfied that the requirements of Section 76 of Succession have been proved. The Respondents are of the view that the Applicant was not the son of deceased and therefore he was not a beneficiary and was not entitled to any notice of Succession Case in which the grant was issued. The period of 2 months was ordered by court and there was no fraud therefore on the part of Respondents. The Applicant has tried to prove that he was entitled to inherit but the evidence is not satisfactory that he was trying to change his ID card is evidence that he himself is not confident that he was the son of the deceased. He has not proved his allegations that the grant was obtained fraudulently by making false statement and concealment from the court something material to the case or that the grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant notwithstanding that the allegations was made is ignorance of in advertently.

I therefore find no cause to revoke the grant. The application is dismissed with costs to the Respondents.

Dated this 15th February, 2008.

J. N. KHAMINWA

JUDGE

15/2/2008

Khaminwa – Judge

Njue – Clerk

Mr. Njenga

Read in open court.

J. N. KHAMINWA

JUDGE

