

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 433 of 2001

IN THE MATTER OF THE ESTATE OF EPHRAIM WAMBUGU MWANIKI... DCD

AND

GIDEON NDURU MWANIKI..... PETITIONER

JUDGMENT

The petitioner herein petitioned for a Limited grant by the application dated 8th August 2001. In that application the petitioner described the deceased as his brother. He stated in the affidavit in support that the appellants had predeceased him and that the deceased was unmarried. He stated that he was the only surviving heir of the deceased. The court granted him his application and a Limited grant was issued to him dated 9th November 2001. Subsequently the petitioner by a Chamber Summons dated 23rd January 2002 sought an injunction against Lucy Wambui Mwangi the applicant in the application for revocation of grant. He sought to restrain her from collecting pension benefits, insurance payments and Co-operative Society benefits belonging to the estate. In the affidavit in support the petitioner stated that Lucy Wambui Mwangi was wrongfully claiming to be the wife of the deceased. Although that application for injunction was not served on the said Lucy the court granted an injunction against her on 29th January 2002. That injunction has remained in force to date. Lucy Wambui Mwangi has now approached this court with summons for revocation of the Limited grant dated 28th August 2007. In that application she deponed that the petitioner after obtaining the Limited grant herein proceeded 3 years later to file a petition of Limited Letters of Administration at Karatina Senior Resident Magistrate's Court Case No. 43 of 2003. Lucy filed a protest at the confirmation stage in the Karatina case. The matter was heard and the judgment delivered by that court dated 20th June 2007 was to the effect that she had proved that she was the wife of the deceased. That she has now obtained a grant following that judgment that when she presented it to the Public Trustee the Public Trustee could not release payment of the estate to her because of the injunction order still in place. She stated that she had not been served with that application and she was unaware of the existence of this action until her attendance to the Public Trustee. The summons for revocation although served upon the advocate for the petitioner there was no affidavit in reply to that application filed by the petitioner. When the matter came up for hearing on 21st February 2008 the petitioner's advocate sought leave to cease to act for the petitioner on the ground that he had not seen his client since year 2001. The court declined that application and ordered for the matter to proceed. The application by Lucy was uncontroverted. Indeed the court is able to confirm from the court record that an injunction was issued against her before service being effected. Lucy annexed a copy of the judgment at Karatina court to her application and it is clear that the court found that she was a wife of the deceased. I therefore find that the application is merited. Indeed the grant issued to the petitioner herein was obtained by means of fraud in that the petitioner stated that the deceased did not have a wife. Accordingly the order of this court is as follows:-

1. *The Limited grant issued herein to Gideon Nduru Mwaniki on 9th November 2001 is hereby revoked.*
2. *That the injunction issued on 29th January 2002 in favour of Gideon Nduru Mwaniki in this matter is herein set aside and discharged.*
3. *That the court does hereby order that this cause be hereby struck out with costs being awarded to Lucy Wambui Mwangi.*

Dated and Delivered at Nyeri this 10th day of April 2008.

MARY KASANGO

JUDGE