



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

Misc 127 of 2006

JOHN MUTHIKE NDUIGAAPPLICANT

VERSUS

CECILIA WANJIRU MURIIGIRI.....RESPONDENT

RULING

Summons to revoke the grant issued in this estate and confirmed was filed by John Muthike Nduiga, the Applicant.

The grounds set out are:-

1. that the said grant and confirmation were obtained fraudulently by making a false statement and by concealing from court of facts material to the case and
2. that grant and confirmation was obtained by means of untrue allegation of facts and that the proceedings to obtain the grant were defective and substance.

The affidavit in support shows that the applicant is the son and the Respondent is daughter –in-law of the deceased. The respondent did not disclose the existence of applicant the son.

I have perused the proceedings and it is clear the survivors in this estate were listed by the chief as:-

1. Ciciria Wanjiru

Murigiiri – daughter in-law.

2. Wanjuki Ngigi – daughter in-law

3. John Muthike Nduiga

It is clearly shown that P&A 80 was completed. Form 38- consent to making of a grant was signed by the Applicant herein authorizing the Respondent to be issued with grant. The name of Applicant was included in the form P&A5 and the petition was gazetted on 12/8/2005. Form 9 affidavit in support of summons of confirmation includes the name of Applicant as the only survivor of the deceased with Cecilia Murigiiri and Wanjiku Ngigi both described as daughters in-law. However when it comes to

distribution only the daughters in law are to inherit. Therefore the Applicant was not given any inheritance.

It is my finding therefore that although the applicant was informed the proceedings of succession he was not included in the inheritance. It also appears as if all the lands of deceased were not disclosed. In the circumstances I find that the Respondent is guilty in failing to disclose all the assets of the deceased and the identities of the 3 wives she mentions in her evidence. There was concealment in terms of section 76 of Succession Act.

I therefore allow the application and grant orders as prayed. No orders as to costs.

Dated this 9th April, 2008.

J. N. KHAMINWA

JUDGE

9/4/2008

Khaminwa – Judge

Njue – Clerk

Mr. Gitonga HB for Mbugua

Ms Njeru.

Read in open court.

J. N. KHAMINWA

JUDGE