



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Misc Case 70 of 2003

DISHON GITHAE NGUNYUMU.....DECEASED

AND

EUNICE MUTHONI MUNGENA.....APPLICANT

VERSUS

PRISCILLA WANJIRU GITHAE.....RESPONDENT

JUDGMENT

Summons for Revocation of grant under section 76 Succession Act P& A rule 44 was filed by Eunice Muthoni Mugena a daughter in law of the deceased DISHON GITHAE NGUNYUMU who died on 21/8/1990.

The grounds upon which application are that is based:-

1. that the grant was obtained fraudulently by concealment from court of something material to the case. In this case the material concealed is that the applicant being a widow of son of deceased was entitled to inherit together with her 5 children a share in the **Mwerua/Kithumbui/Plot No. 763** the only asset of deceased on her own behalf and on behalf of children. And that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant.

The parties gave evidence orally in court under court direction. The applicant states that she was not informed of the filing of succession case as she was in Mombasa. When she learnt of the fact she came home and learnt that the family land was still intact. On checking on the case to know that her husband was not one of the beneficiaries. Her effort to be included as beneficiary had not succeeded as the chief's letter seeking to include her name reached after grant had been issued and confirmed. The applicants case was closed after her witnesses, brother in law gave evidence. For the Respondent evidence was given by Priscilla Wanjiru Githae who confirmed that she was the widow of the deceased. She said she was aware of applicant with her 5 children since they came to her husband funeral. She said her son Michael Ngunyumu had his own title. She believed that her deceased son James had his own land and that is why she did not include them in succession case. She also explained that Agnes Wambui got one acre because she contributed Shs.24,000/= to the funeral. The portion of land was sold before grant was issued. Also that Samuel was taking ½ share of Geoffrey which had been sold to him. The consequence is that although Respondent said in the forms that Agnes and Samuel were her children it is false. The value of the estate was not correctly stated and therefore the provisions of section 49 Succession Act the lower court had no jurisdiction to deal with the estate which was valued at more than Shs.100,000/= again from

her evidence she included the purchasers of the assets of the estate and allocated 1 ½ acres to them on the ground that she had sold the pieces of land to them for the funeral expenses and her son had sold half his share.

My finding is that the Respondent proceeded to obtain a grant in fraudulent manner concealing from the court material relevant to the matter.

I find that the provisions of the law namely Section 76 of Succession Act has been proved and the applicant has proved her case.

The application is allowed and orders granted as prayed.

No orders as to costs.

Dated this 12th June, 2007.

J. N. KHAMINWA

JUDGE

12/6/2006

Khaminwa – Judge

Njue – Clerk

Mr. Kathungu HB for Magee – Respondent

N/A

J. N. KHAMINWA

JUDGE