

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Misc Civil 7 of 2002

LOISE WAMUYU GACHOKI.....PLAINTIFF

VERSUS

PATRICK MWAI NYAMU.....DEFENDANT

RULING

The application dated 12/5/2005 seeks the revocation of grant made on 21/5/1996 and confirmed on 7/10/1996 and confirmed on 7/10/97 in *Kerugoya Succession Cause No.157 of 1995* made to Paul Cira Gatithi Mwai. The application is made on the ground that the proceedings to obtain the same were defective in substance and the grant was obtained fraudulently by making false statement or by the concealment from the court of something material to the cause committed by the Respondent. Section 76 Cap.160 and P & A rule 44 is involved. The application is supported by affidavit of Loise Wamuyu Gachoki which states that the Respondent filed *Succession Case No. 157 of 1995* secretly and the respondent inherited the deceased estate **Mutira/Kanyei/658**. It is further stated that the Respondent lied in failing to disclose that there were other beneficiaries while the Applicant is an in-law of deceased. The applicant is opposed by the Respondent Paul C.G Mwai who has sworn affidavit disclosing that Applicant has plot No. Mutira Kanyei given to her by her husband deceased Nyamu Chira. That the administrator has completed administration and has complied with provisions of section 83 (g) in that he has got the grant confined and has distributed the estate. Both parties were permitted by court to give further evidence orally and also to call witnesses. The applicant called 2 witnesses. She has self took oath and said that her husband is alive but resides in Mombasa. She added that she is claiming ½ acre of land. But she is already registered proprietor of plot No.659 as stated in the affidavit of Respondent. She claims because the ½ acre was given to Regina deceased sister of Respondent and since Regina is dead the land should be inherited by herself. But it is now inherited by Patrick Mwai and Beatrice. She alleged an agreement which had been made that if Regina was to die she would take ½ acre she did not produce such an agreement. The ½ acre she was claiming was not in the hands of Regina's daughter Beatrice. Applicant's witness Simoni Muriuki Kibingo said that Beatrice daughter of Regina who is his cousin and Patrick is his cousin also. He produced green card s Exhibit No 1 which shows that the Land is registered in the name of deceased Regina since 1986. He alleged the agreement that if Regina was to die and Beatrice to marry the ½ acre should be returned to Applicant. The green card shows that the piece of land approximately 0.40 Ha was given to Regina as a gift by Nyamu Chira. There is exhibit of proceedings of Lands Disputes Tribunal, but the proceedings were terminated as the matter had already been dealt with by a court of law. The evidence called for Applicant is aimed at proving that the applicant is entitled to ½ acre piece of land out of the registered land of deceased Regina. The Respondent testified that the matter of succession was advertised in Gazette Notice No.4803. He said he was the administrator of the estate and he has completed the administration. He also said he is the sister of deceased while the applicant is the step sister-in-law. He said has priority to a grant. Beatrice the daughter of deceased also testified and said she was supporting the administrator. She said the applicant is not entitled to the land she was claiming.

I have perused the evidence land before the court. I find that the plot out of which the applicant is claiming ½ acre portion was registered in the name of Regina deceased as an absolute gift from the previous registered owner Nyamu Chira. I do not find any proof of the agreements alleged that the applicant is claiming under. The beneficiaries /survivors of Regina are entitled to inherit the land. The

claimant has no interest in the land and therefore she was not entitled to notice of proceedings in succession.

I find the Administrator acted honestly and followed the procedure set out for obtaining letters of administration. In this estate, the matter was gazetted and therefore there was no secrecy about application. He honestly believed that the Applicant had no interest in the inheritance in this estate. I therefore find no evidence to warrant revocation of the grant. The application is dismissed with costs to the Respondent.

Dated this 5th July, 2007.

J. N. KHAMINWA

JUDGE

5/7/2007

Khaminwa – Judge

Njue – Clerk

Mr. Momanyi Hb for Magee for Applicant

Respondent in person

Ruling read in open court.

J. N. KHAMINWA

JUDGE