



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 1601 of 1997

IN THE MATTER OF THE ESTATE OF NGUGI GITHETE (DECEASED)

BETWEEN

MUTHIGANI GITHETE MUTHIGANI APPLICANT

AND

GRACE NYAMBURA NGUGI..... RESPONDENT

RULING

By summons dated 18.06.01, the applicant sought revocation or annulment of grant of letters of administration intestate of the estate of Ngugi Githete (deceased) issued to the respondent, Grace Nyambura Ngugi on 09.03.89 in Thika Resident Magistrate's Court Succession Cause No.41 of 1988. The grounds for the application for revocation are that:-

- i) The said letters of administration were fraudulently obtained.
- ii) Some dependants of the deceased were left out in the application for letters of administration.

The application is supported by the applicant's own affidavit sworn on 18.06.01 and by the affidavit of Wilson Muiruri Mwaniki also sworn on 18.06.01. The essence of the two affidavits is as follows. The applicant is a brother of the deceased who died on 01.02.84. The respondent filed Thika Resident Magistrate's Court Succession Cause No.41 of 1988 petitioning for letters of administration of the deceased's estate claiming the same as a wife. She named only herself and her two sons, Bernard Kironjo and Phares Gaitho Ngugi as having survived the deceased. She left out the applicant herein who is a brother to the deceased and others entitled to the deceased's estate. It is the applicant's case, supported by the affidavit evidence of Wilson Muiruri Mwaniki that the land in question came to be in the name of the deceased as an honour, to hold in trust for himself and his brothers including the applicant herein since the deceased was the first born son as it is the custom among the Kikuyu tribe. The deceased subdivided the land among his brothers including the applicant, each of whom constructed a house. However, the deceased died before the subdivision was formalized. The applicant has since been living on the suit land, cultivating and growing food crops and coffee plants. It is the applicant's case that the respondent concealed these material facts from the Thika court in obtaining the grant, hence the present

application for revocation or annulment of the grant.

The summons for revocation came up for hearing before me on 08.02.06 whereat the applicant/objector was represented by learned counsel, Mr. S.M. Kenyonzo. There was no appearance for the respondent/administratrix. Applicant's counsel informed this court that hearing notice for 08.02.06 was served on the firm of Macharia & Co. Advocates for the respondent but there was no appearance for the respondent at the hearing. There is an affidavit of service by Enock Bulemi Mulindi, process server, sworn on 16.12.05 to the effect that he served the firm of Macharia & Co. Advocates of Thika with the hearing notice on 07.12.05. Applicant's counsel, therefore, sought to proceed with the application for revocation and I allowed the said application to proceed.

Applicant's counsel then pointed out that on 16.03.03, Waweru, J had directed that the petitioner/administratrix, who is the respondent herein, should file a replying affidavit to the application for revocation of the grant to her within 21 days and that no such replying affidavit had been filed. Applicant's/objector's counsel informed this court that although he had the applicant/objector plus two other witnesses, including Wilson Muiruri Mwaniki in court ready to testify in support of the application for revocation of the grant, he did not find it necessary to do so since the respondent had not bothered to attend the hearing. Applicant's counsel relied on the affidavit evidence on record and urged this court to allow the application for revocation of the grant.

I have given due consideration to the application for revocation of the grant to the respondent and the affidavit evidence in support of the application.

The affidavit evidence on record by the applicant himself and by Wilson Muiruri Mwaniki remains uncontroverted. It is clear that the respondent herein concealed material facts from the Thika court in obtaining the subject grant, issued to her by the Thika court on 09.03.89 and confirmed by the same court on 01.02.90. This offends section 76 (b) of the Law of Succession Act (Cap.160). The respondent was afforded a chance by Waweru, J on 16.03.03 to file a replying affidavit to the application for revocation of the grant to her within 21 days but she never bothered to file such affidavit. I conclude from her omission that she had no answer to the depositions of the applicant herein plus those of Wilson Muiruri Mwaniki. In the circumstances, there is only one logical course for this court to take in this matter, i.e. to revoke the subject grant. The said grant is hereby revoked.

Orders accordingly.

Delivered at Nairobi this 18th day of April, 2006.

B.P. KUBO

JUDGE