

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1187 of 1999

IN THE MATTER OF THE ESTATE OF MARTHA WAMBUI KARIITHI (DECEASED)

**MARTHA WAMBUI GACHOYA.....OBJECTOR/
APPLICANT**

VERSUS

**JOYCE MURINGI KARIITHI.....PETITIONER/
RESPONDENT**

RULING

By summons dated 07.02.2000 and filed on 08.02.2000 stated to be brought under section 76 (A) of the Law of succession Act (Cap.160), Martha Wambui Gachoya (objector/applicant) applied for revocation/annulment of grant of letters of administration intestate issued on 28.07.99 to Joyce Muringi Kariithi (petitioner/respondent) on the following grounds:-

- a) That the proceedings to obtain the grant were defective in substance in that the petitioner did not disclose to the court that the deceased had a son and children of the deceased's son have an equal priority interest in the estate of the deceased.
- b) That the grant was obtained fraudulently.
- c) That the death certificate herein was forged and should not have been relied upon for the grant.
- d) That the costs of this application be provided for.

When the file on this cause was placed before me on 07.06.06 the objector/applicant was represented by learned counsel, Mrs B.N. Kituyi while the petitioner/respondent was represented by learned counsel, Miss L.M. Njuguna. Both counsel initially told the court that the issue to be addressed at that session was the existence or otherwise of an oral Will and that the rest would depend on the determination made of that issue. I directed the parties to proceed to address the issue they identified for that day. However, when petitioner's/respondent's counsel took the floor, she said there was a pending application dated 07.02.2000 for revocation of the subject grant and urged that it be heard first. Objector's/applicant's counsel agreed and I allowed the objector/applicant to proceed to prosecute the summons dated 07.02.2000 for revocation/annulment of the subject grant. Advocates for both parties then presented their arguments and counter – arguments regarding the application for revocation/annulment of the grant.

The grounds upon which the application dated

07.02.2000 and filed on 08.02.2000 for revocation/annulment of the subject grant are stated as follows.

'1.That the debtor herein owes the creditor Khs.17,664,367.40 which continues to accrue interest and the debtor did on 28th October, 1999 request this court to issue a bankruptcy notice to him

which notice was issued on 29th October, 1999 by this Honourable court.'

No other ground is cited in the application and the relevance of the only ground cited above is not apparent on the face of the application. Be that as it may, there is in the file an order by the Deputy Registrar issued on 11.12.2000 that the application presented on 08.02.2000 was withdrawn. It would, therefore, appear that in presenting arguments and counter-arguments at the session of 07.06.06 relating to the purported summons dated 07.02.2000 and filed on 08.02.2000, both advocates engaged the court in a wild goose chase! The parties' advocates wasted the court's time and are hereby reprimanded.

I declare the proceedings of 07.06.06 relating to summons dated 07.02.2000 and filed on 08.02.2000 for revocation/annulment of grant issued on 28.07.99 a nullity and direct the parties to take a date at the Registry for hearing of arguments and counter-arguments on outstanding issues in the entire case. Costs shall be in the cause.

Orders accordingly.

Delivered at Nairobi this 29th day of June, 2006.

B.P. KUBO

JUDGE