



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1980 OF 1998

**IN THE MATTER OF THE ESTATE OF GATHERA GATHUNGURI ALIAS
SIMEON GATHARA GATHUNGURI (DECEASED)**

LEONARD KAMANU GATHUNGURI.....PETITIONER/APPLICANT

Versus

RACHEAL MUTHONI GITHARA.....OBJECTOR/RESPONDENT

RULING

The applicant Leonard Kamanu Gathunguri filed this Summons for revocation of the Grant of Probate with a written will made to Racheal Muthoni Gathara on 1st December 1998 in respect of the estate of the deceased herein.

The applicant is the brother of the deceased, while the respondent is the widow and executrix of the will of the deceased. The reason(s) advanced by the applicant for revocation are rather vague to wit:

“That the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant in that the protester and other beneficiaries misled the court that the applicant herein want to tell the court the truth”

The applicant’s complaint as I understand it from the grounds advanced in the Summons is the inclusion of plot No. Kiambaa/Karuri/T.59 as the property of the deceased. According to the applicant the said plot was registered in the deceased name to hold one half share in trust for the applicant. That the deceased fell ill before he transferred the plot although they had entered into an agreement on 24th October 1960 for the deceased to hold the property in Trust. No copy of the said agreement is attached to the applicant’s affidavit.

The matter came up for hearing on 24th November 2003 before Hon. Kamau J. and the applicant was directed to file a supplementary affidavit exhibiting documentary evidence to support his alleged claim in the affidavit within 15 days. Failure to do so the court directed that the application for revocation dated 16th July 2001 would stand dismissed.

The applicant failed/neglected to comply with the said order and therefore technically the Summons for Revocation herein stands dismissed.

Besides that point, it is also important to point out that the Summons for Revocation lacks merit in that the applicant's claim is in respect of property allegedly held in Trust for him by the deceased.

The claim applicants which is based under the Law of Trust cannot be a ground for the revocation of the grant. The deceased left a valid written will and a named executrix of the will and in this regard the Summons for revocation must fail.

Accordingly the Summons for revocation has no justification in law and it is hereby dismissed with costs to the respondent.

Ruling read and signed on 1st July 2004.

MARTHA KOOME

JUDGE