



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**SUCCESSION CAUSE NO. 2182 OF 1997**

**VORGOMIA NJERI CHURU ..... PETITIONER**

**VERSUS**

**SIMON MUCHIRI ..... APPLICANT**

**RULING**

Before me for hearing to-day is Chamber Summons dated 16-2-99 filed by the Applicant, Virginia Njeri Churu, praying for orders, firstly, that the grant of letters of administration made to the Respondent/Petitioner herein be annulled on the ground that they were obtained fraudulently by the making of a false statement, by concealment of material facts which ought to have been disclosed and by means of an untrue allegation; and secondly, the Applicant prays that the name of the Respondent herein reflected on the Land Register in respect of Land parcel No. LOC.9/ICHICHI/215 the estate in this cause which the Respondent herein has caused himself to be registered be deleted and the name of the deceased to be reverted as the proprietor of the said piece of land.

Those are the two important prayers in this application which is opposed by the Respondent Simon Muchiri. Save for the use of the term a “chamber”, the rest of the application is in order as it has been brought under the correct provisions of the law being Section 76 of the Law of Succession Act and Rule 44(1) of the Probate and Administration Rules. This application has been fully argued by each side and I am now placed in an uncomfortable situation of making this court’s final decision in this matter where my learned sister and brother judges have already made important pronouncements or decisions on important issues in circumstances over which I have no appellate jurisdiction.

On 8-11-2000, for example, Ang’awa J. steered clear of the ruling of Githinji, J. dated 30-11-99 where the latter learned Judge dismissed the Respondent’s application which asked that Nyeri High Court Probate and Administration Cause No. 34 of 1997 be consolidated with this cause and the Nyeri file be brought to Nairobi. While the Applicant had filed the Nyeri Succession Cause on 27-1-97, the Respondent had filed this Succession Cause in this court on 13-10-97. They both concern the estate of Mary Wambui Wang’ombe alias Wambui Wang’ombe (deceased).

Ang’awa J. noted that while a notice to appeal against the ruling of Githinji, J. was filed, the intended appeal was never filed. At the hearing of this application, there was no dispute that the position remains the same. No appeal has been filed, and Ang’awa J., on 8-11-2000 also dismissed the Respondent’s

application then before here, holding that granting a stay of proceedings in this Succession Cause would amount to going round Justice Githinji's ruling dated 30-11-99. By the time the two learned judges were respectively handling the applications leading to their respective decisions referred to above, the Respondent before me now had, in this matter, been issued with a grant of letters of administration intestate on 22-12-97 and had had that grant confirmed on 23-7-98.

In his ruling dated 30-11-99 Justice Githinji decided two important issues relevant in the summons for revocation before me now. He decided a number of other issues but those I consider relevant and important for the purpose of the summons for revocation before me are these two. Firstly, he said

“A Will takes precedence and if it is alleged that deceased left a valid will the petition for grant of probate takes precedence to the petition for Grant of letters of administration intestate”.

Secondly he added:

“... the petition for Grant of Probate was filed in Nyeri Court before the petition for Grant of letters of administration was filed in this cause. So the only competent petition is the one which was filed in High Court Nyeri as there cannot be two petitions in respect of the same estate”.

As stated earlier, there has been no appeal by the Respondent against the decision of Justice Githinji, not only on those two issues, but also on other issues decided in his aforesaid ruling. To-date that decision remains and for me to dismiss the Applicant's summons dated 16-2-99 would mean saying what is contrary to Justice Githinji's decision on the two issues specified in the quotations above. Yet I have no appellate jurisdiction over that decision. In the circumstances, I have no alternative but to grant the Applicant's application now before me.

Accordingly the Applicant's summons dated 16-2-99 be and is hereby granted in terms of prayers (1), (2) and (4)

Delivered, dated and signed at Nairobi this 1st day of March 2002.

**J.M. KHAMONI**  
**JUDGE**

Present:

Mr. Aswani

Mr. Ashimosi