



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**SUCCESSION CASE NO. 669 OF 2009**

**IN THE MATTER OF THE ESTATE OF THE LATE GATUCHI MUHU alias JACKSON NDUCI**

**NELIUS NJOKI WACHAI.....APPLICANT**

**VERSUS**

**FRANCIS KAMAU WACHAI .....ADMINISTRATOR**

**JUDGMENT**

The grant of letters of administration intestate in respect of the estate Gatuchi Muhu was initially made to Maina Mwangi in the Principal Magistrates Court at Murang'a in Succession Cause No. 54 of 1993 and to Francis Kamau Wachai in Kangema Resident Magistrates' Court Succession Cause No. 20 of 2002.

By a summons for revocation of grant filed in this court on 17 June 2003 the applicant sought to have the grant made to Maina Mwangi revoked on grounds stated in the affidavit in support of the summons.

On 22 October 2008 it was ordered by consent that the grants made in the two separate causes be revoked and that a fresh grant be made in the joint names of Nelius Njoki Wachai, the applicant herein, and Mwangi Maina. The joint administrators were directed to file a summons for confirmation of grant within fourteen days and if any of them would, for one reason or the other, be dissatisfied with the proposed scheme of distribution was directed to file a protest against the confirmation of grant within fourteen days after issuance of the fresh grant.

Maina Mwangi proceeded to file summons for confirmation of grant on 13 November 2008. In the affidavit in support of the summons, he described himself as a purchaser and proposed to retain 3 acres of the deceased's estate known as Land Parcel No. Loc. 19/Rwathia/1269.

The applicant protested against the confirmation of grant in those terms deposed that Mwangi was stranger to the deceased's estate; according to her he was not the deceased's dependant or survivor. Neither was he a beneficiary of his estate. She, however, acknowledged that the deceased had sold part of his estate known as Loc. 19/Rwathia/T.346 to him in 1969. She proposed that the remainder of the estate, being Loc. 19/Rwathia/T.345 and Loc. 19/Rwathia/1269 be distributed equally amongst the deceased's four children and herself; her share would be subject to life interest.

In a ruling delivered by this court (Wakiaga, J) on 18 April 2013, the protest was upheld and the court directed the estate to be distributed in accordance with the applicant's proposed scheme of distribution. By the same token, the summons for confirmation of grant was dismissed; the learned judge went further to dismiss Maina Mwangi's claim as a purchaser of part of the estate.

Despite her apparent success, the applicant came back to court, this time round, by a summons under section 76 seeking revocation of grant made to Francis Kamau Wachai on the ground that the said Francis Kamau Wachai who is her son misled her into believing that the entire estate would be transferred into her name. Thus, according to her, the grant was obtained by untrue allegation of fact essential in law to justify the grant.

The application by the applicant does not deserve to see the light of the day for the following reasons. First, as noted, the grant that was made to Francis Kamau Wachai in Kangema Resident Magistrates' Court Succession Cause No. 20 of 2002 was revoked as early as 22 October 2008 upon a consent order and at the instigation of the applicant herself; there is, therefore, no longer in existence a grant in the name Francis Kamau Wachai that is capable of being revoked or annulled. Secondly, a subsequent grant was made, again by consent of the parties including the applicant herself, in the applicant's name and that of Maina Mwangi and it is this grant that was subject to the confirmation proceedings.

Thirdly, the grant in the joint names was confirmed on the basis of a protest by the applicant herself; as a matter of fact, the court directed that the deceased's estate be distributed as proposed by the applicant in her affidavit of protest.

Assuming for a moment that the grant which the applicant seeks to revoke or annul is the one made in her joint name with Maina Mwangi, it would smack of bad faith for the applicant to be made a joint administratrix at her own instance; participate in the confirmation proceedings of that grant; have the grant confirmed as per her wishes and, then turn around to seek its revocation or annulment.

Based on the reasons I have given, my short answer to the applicant's application is that it is mala fides, it is misconceived and it is an abuse of the process of the court. I hereby dismiss it; I will, however, spare the applicant the burden of costs since the dispute is between family members. It is so ordered.

Signed, dated, read and delivered in open court this 20<sup>th</sup> day of September 2019.

Ngaah Jairus

**JUDGE**