



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**SUCCESSION CAUSE NO 352 OF 2013**

**(FORMERLY NYERI HC SUCC CAUSE NO 396 OF 2011)**

**IN THE MATTER OF THE ESTATE OF ZABRON M GAGA (alias ZABRON MWANGI),  
DECEASED**

**AMBROZE KIMANI MWANGI & 30 OTHERS..... APPLICANTS**

**VERSUS**

**JEMINA WANGECHI THUITA..... ADMINISTRATOR/RESPONDENT**

**J U D G M E N T**

1. This judgment concerns the summons dated 4/05/2011 for revocation of grant issued in *Kangema SRM Succession Cause No 77 of 2009* on 27/01/2010 and confirmed on 25/08/2010 in respect of the estate of the Deceased. The property comprising the estate was one half share of a plot of land Reference **Loc 12/Sub-Loc 1/1221/19**. The distribution ordered in the confirmed grant was that the said half share of that plot should go to *Stephen Irungu* and *Edward Mwangi Gatundu* who were the Deceased's grandsons. The Petitioner/Administrator, *Jemina Wangechi Thuita*, was their mother.

2. The main ground for seeking revocation is stated to be that the grant was obtained fraudulently by concealing from court material facts, and also by making a false statement. The alleged false statement was that the Deceased *Zabron Mwangi* (alias *Zabron Mwangi Gaga*) and *Mwangi Ngare* were one and the same person whereas they were different persons, both deceased, who had jointly owned the parcel of land Loc 12/Sub-Loc 1/1221/19. The Petitioner/Administrator conceded that indeed this was a mistake in her papers before the lower court but pointed out that the confirmation of grant was in respect only to the half portion of the plot of land owned by the Deceased herein Zabron Mwangi (alias Zabron Mwangi Gaga). The other half share of the plot belonged to Mwangi Ngare, a different deceased person.

3. The material facts alleged to have been concealed from the court below, were the Applicants' beneficial interests in the plot of land, acquired through contributions by their predecessors in the development of the plot, as more particularly set out in the supporting affidavit.

4. The Administrator/Respondent opposed the application for revocation of her grant by replying affidavit filed on 06/07/2011. She pointed out that the plot of land was owned jointly by her father-in-law Zabron Mwangi Gaga (the Deceased herein) and Mwangi Ngare; that it was Mwangi Ngare who invited the Applicants to contribute money to develop the plot; that the Deceased herein never surrendered his ownership of half share of the plot; and that she petitioned in the lower court for a grant only in respect to the estate of her father-in-law, the Deceased herein and the half share of the plot that he owned.

5. On 29/11/2011 the High Court at Nyeri (where this matter was before it was transferred here) directed that the summons for revocation be heard by way of *viva voce* evidence. The matter was heard by my predecessor, Ngaah, J. The 1<sup>st</sup> Applicant and one other Applicant testified. The Administrator/Respondent also testified but called no other witness. The parties then filed written submissions. This matter has come to me only for preparation and delivery of judgment.

6. I have read the testimonies of the witnesses. I have also considered the submissions. One thing is clear: the Applicants do not have any interest in the estate of the Deceased herein Zabron M. Gaga (alias

Zabron Mwangi) as dependants of the Deceased. There is no relationship between them and the Deceased either by consanguinity or affinity. Their claim is in fact a civil claim in Loc 12/Sub-Loc 1/1221/19 allegedly acquired through monetary contributions for development of the land. Their claims do not belong in this succession court; they belong in a civil court.

7. The main purpose of succession proceedings is the determination by the court of the persons beneficially entitled to the estate of the deceased person (usually his or her heirs) and their respective shares therein. Succession proceedings are intended to be simple and expeditious; they are not designed for complex civil claims.

8. Indeed the Applicants already have a civil suit where they are agitating the same claims in LR Loc 12/Sub-Loc 1/1221/19. This is *Nyeri ELC Case No 46 of 2011 (O.S.)* pending before the *Environment and Land Court* at Nyeri. The Applicants herein are the plaintiffs in that case while the Administrator/Respondent herein is the 1<sup>st</sup> defendant in the case. It is in that civil suit where the Applicants should pursue their claims in plot LR Loc 12/Sub-Loc 1/1221/19 to their logical conclusion. Those claims have no place in this succession court.

9. In the event I must refuse the summons for revocation of grant herein. It is dismissed with costs to the Administrator/Respondent. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 2<sup>ND</sup> DAY OF JULY 2015**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 3<sup>RD</sup> DAY OF JULY 2015**