



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
SUCCESSION CAUSE NO. 91 OF 2013

IN THE MATTER OF THE ESTATE OF CHEGE NGEA (DECEASED)

GICHUHI MWANGI.....APPLICANT

VERSUS

MAINA CHEGE.....1ST RESPONDENT

JOHN RAPHAEL MWANGI CHEGE.....2ND RESPONDENT

JUDGMENT

The applicant filed a summons for revocation or annulment of grant made on 6th April 2001 to the 1st respondent; the grant which was subsequently confirmed on 7th December, 2001 was in respect of the estate of the late Chege Ngea (deceased). The summons was supported by the affidavit of the applicant sworn on 13th day of February, 2013.

The basis of the applicant's application is that the grant was obtained by concealment of facts material to the petition and that the respondent obtained the grant without the participation of the applicant who claims to be rightfully entitled to benefit from the estate of the deceased.

According to the affidavit which the applicant swore in support of his summons, the deceased was survived by his brothers Mwangi Ngea, Macharia Ngea and Muranja Ngea; the applicant is the son of Mwangi Ngea who was also the father of Gichuhi Mwangi and three other male children who are said to be deceased.

Upon the petition for grant of letters of administration of administration intestate, the court made the grant to Maina Chege who upon confirmation of the grant shared out land parcel number **Loc.8/Gitura/Kairichi/107** which apparently was the only asset comprising the estate between himself and John Raphael Mwangi.

In their response vide a replying affidavit sworn on 19th March, 2013 the respondents have stated that the deceased was their father while the applicant was only his cousin; accordingly, their right in the petition for letters of administration of his estate and their interest in the distribution of that estate ranked prior to

that of the applicant.

The respondents have also stated that the applicant has his own land which he acquired pursuant to a court decree in **Murang'a Senior Resident Magistrate's court Civil Suit No. 17 of 1976**. They have contended that they have always been willing to abide by the judgment of the court in that suit and subdivide the parcel of land referred to as **Loc. 8/ Gitura/ Kairichi/107** so that the applicant can get his two acres but that the applicant has remained the stumbling block in this exercise.

When directions were taken on the summons, parties agreed that it should be disposed of by way of written submissions. They indeed filed and exchanged the submissions which upon perusal are more or less a reiteration of their respective clients' depositions in their affidavits.

Without delving deeper into the issues raised in the applicant's summons, one issue which stands out and which appears to be a common ground between the two parties is the court's award made in **Murang'a Senior Resident Magistrate's Court Civil Case No. 17 of 1976**. According to that award the deceased was ordered to transfer to Maina Mwangi, who I suppose is the applicant's late father, two acres of land out of the parcel referred to as **Loc. 8/Gitura/Kairichi/107**. A copy of the court proceedings in which the award was made is marked as exhibit "MC" on the respondents' affidavit.

I understand the respondents who are heirs of the deceased to say that they are still willing to comply with the court's award and transfer the two acres of the land in issue to the applicant whom, as far as I can gather from his affidavit, is the sole heir of Maina Mwangi. On his part, it is clear from the submissions filed on his behalf that the applicant is agreeable to this arrangement. This implied consensus should settle the dispute between the parties without prejudicing their rights. Accordingly, in exercise of the powers of this court granted under **section 47** of the **Law of Succession Act** as read with **Rule 73** of the **Probate and Administration Rules** and for completeness of record, I hereby order the respondents to subdivide and transfer to the applicant two acres of land out of land parcel referred to as **Loc.8/Gitura/Kairichi/107**. The applicant's summons dated 13th February, 2013 is allowed in those terms except that parties shall bear their own costs.

Dated, signed and delivered in open court this 9th May, 2014

Ngaah Jairus

JUDGE