

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 906 of 1997

**IN THE MATTER OF THE ESTATE OF WANJA GACHUHI alias MARGARET WANJA
GACHUHI (DECEASED)**

RULING

The Summons dated 29th April 1997 is for revocation of the grant made on 12th May 1994 to Stephen Njoroge Gachuhi and confirmed on 3rd November 1995. On the face of the application, it is purported that the application is supported by the affidavit of Muchoki Gachuhi. The affidavit filed contemporaneously with the application on 30th April 1997 purports to be that of Stephen Njoroge Gachuhi who is the respondent but it is signed Muchoki. There is a reply by Stephen Njoroge Gachuhi.

An application of this nature is granted at the discretion of the court. To exercise that discretion some material must be placed before the court by way of an affidavit. The affidavit before me, sworn on 24th April 1997, is so mixed up that it amounts to no affidavit at all. There is therefore no material upon which I can exercise my discretion to determine the application dated 29th August 1997. I am surprised that the applicant has not seen this mix-up to date.

It may be argued that Article 159 of the Constitution provides a cure to such an error. This is not a mere technicality of procedure. The affidavit carries the evidence which supports the application. If the affidavit is muddled up, then the whole process is wrong. The applicant should have applied to withdraw the affidavit and to thereafter swear and file another. He did not avail himself of the remedy, instead he insisted on arguing the application with that anomaly.

I find no basis upon which I can determine the application before me. I will strike out the affidavit sworn on 24th April 1997, and grant leave to the applicant to file a fresh affidavit to support the revocation application dated 29th April 1997.

DATED, SIGNED and DELIVERED at NAIROBI this 10th DAY OF May, 2013.

W.M. Musyoka
Judge