



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CASE NO. 70 OF 2018

IN THE MATTER OF THE ESTATE OF CHARLES CHEGE GITAU – (DECEASED)

PRISCILLAH WAMBUI THUKU.....INTERESTED PARTY/APPLICANT

VERSUS

MILKA NJERI MWAURA

PATRICK MBURU GITAU.....ADMINISTRATORS/RESPONDENTS

R U L I N G

1. The Summons (General) and Summons for revocation or annulment of grant were filed contemporaneously on 31st July, 2018 and are expressed to be brought and Rule 49 and 59(1) of the Probate and Administration Rules and under Section 76 of the Law of Succession, respectively. While the latter summons primarily seeks the revocation of grant made in respect of the estate of **Charles Chege Gitau**, the former contains a different set of prayers related to the succession cause earlier filed in the lower court and certain assets of the estate.
2. The Summons are based on the grounds on the face thereof and on the affidavit of **Priscillah Wambui Thuku**, the Applicant. The key depositions therein are that the Applicant is a wife to the deceased; that the deceased died on 18th September, 2017 and that subsequently, **Milka Njeri Mwaura** and **Patrick Mburu Gitau** (the Respondents) filed Succession Cause no. 434 of 2017 at the CM's Court Thika, and obtained a grant of letters of administration on 9th February, 2018, which grant was confirmed one month later.
3. She further complains that the grant was obtained through proceedings that were defective in substance as the magistrates who dealt with the matter lacked territorial and pecuniary jurisdiction a, the deceased having resided in Mombasa immediately prior to his death, while the value of his estate exceeded the jurisdiction of the Magistrates Court at Thika; that the material fact that the Applicant is a wife and dependent of the deceased with whom she had two children, was concealed; that the 2nd Administrator/Respondent, a brother to the deceased, was wrongly included through misrepresentation in the said proceedings as a beneficiary of the estate of the deceased and that necessary consents were not obtained from all the beneficiaries. It was asserted that the 2nd Administrator was a brother to the deceased therefore, not a beneficiary to the deceased's estate.
4. The 1st Respondent/ Administrator, **Milka Njeri Mwaura** swore a replying affidavit on 31st August, 2018 on her own behalf and on behalf of the 2nd Respondent/ Administrator. Asserting her status as the wife of the deceased, she deposed *inter alia* that the deceased died while possessed of properties in both Mombasa and Thika, thus the filing of the Petition for grant in the Thika Court Thika was proper, and besides, there was no proof tendered by the Applicant as to the value of the estate. She contended that she was unaware that the Applicant herein was a wife to the deceased. In defence of the dependency of the 2nd Administrator /Respondent, she deposed that the said party has always been supported by the deceased.
5. The Summons (General) and Summons for revocation were heard simultaneously and were canvassed by way of oral arguments. Mr. Macharia Ng'aru, counsel for the Applicant, placed reliance on the supporting affidavit and annexures. He highlighted the anomaly that the grant was confirmed barely a month after issue. He submitted that as the deceased's last domicile was Tudor-Mvita in Mombasa, and the bulk of the estate located in Mombasa, the proper court for purposes of succession was the Magistrates Court at Mombasa. In his view, the Respondents surreptitiously filed the succession Cause in Thika with the sole intention of excluding the Applicant from the proceedings. Stating that the grant herein was made without jurisdiction, he prayed that the grant be revoked.
6. Miss. Githinji for the Respondent/ Administrators in her submissions relied on the replying affidavit. She contended that the lower court had territorial jurisdiction and that the 2nd Administrator/Respondent was a dependent of the deceased. It appears that the parties left the court to determine the Summons (General) on the basis of the affidavit material filed as no submissions touched directly thereon.

7. The court has considered the material canvassed in respect of the Summons for revocation and Summons General filed simultaneously on 31st July 2018. Key grounds in support of the former summons are that the Magistrate court that issued the impugned grant lacked territorial and pecuniary jurisdiction and that the grant was fraudulently procured by concealment of material facts, including the fact that the Applicant was the wife and dependant of the deceased, and had two minor children with him, and further by making untrue allegations to the effect that the deceased's brother **Patrick Mburu Gitau** was a beneficiary to the estate and that not every person having equal priority to apply for a grant had given consent to the petition giving rise to the impugned grant.

8. There is no dispute that the deceased lived and worked in Mombasa (**Tudor – Mvita**) prior to his intestate death. There is no dispute that he was the husband to **Milka Njeri Mwaura (Milka)** who petitioned for letters of administration in **Thika CM'S Succession Cause No. 434 of 2017** and was appointed alongside **Patrick Mburu Gitau** as administrator of the estate of the deceased. Subsequently, the grant was confirmed. Although **Milka** and **Patrick** had listed two landed assets and monies in three bank accounts held by the deceased in Mombasa as comprising the deceased's estate, it has become apparent that the deceased's estate included several other assets, key among them being eight motor vehicles, which fact is in part confirmed by the copy of Summons for Rectification of grant filed on 18th May 2018 in the cause at Thika, and the so-called agreement executed by the family of the deceased on 26/9/17 before the Chief, Kairi Location, purporting to distribute the estate of the deceased.

9. Reviewing the matters urged before, I am of the considered view that the question of jurisdiction is adequate to dispose of the summons for revocation without the determination of the further question relating to the status of the Applicant herein and her children. I take such a view advisedly because the latter question appears to be contested and ought, in all fairness, to be determined on the basis of evidence.

10. Section 49 of the Laws of Succession Act provides that:

“The Magistrate’s court within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed the pecuniary limits set out in Section 7 (1) of the Magistrate’s Courts Act, 2015, have in respect of that estate the jurisdiction conferred by Section 48:

Provided that –

i. the magistrate may, with the consent or by the direction of the High Court transfer the administration of an estate to any other Magistrate’s Courts where it appears that the greater part of the estate is situated with the area of that other magistrate, or that there are other good reason for the transfer.

ii.

iii.” (emphasis added)

11. The pecuniary jurisdiction of chief magistrates was enhanced to KShs.20 million effective January, 2016. Strictly speaking therefore, given the number of assets listed in the Petition filed before the Chief Magistrate’s Court Thika, the chief magistrate presiding over that court may have had the *pecuniary* jurisdiction to entertain the Petition. It does appear however that magistrates at the level of resident magistrate whose pecuniary jurisdiction is Sh. 5 million issued the impugned grant (**V. Kachuodho R.M.**) and the certificate of confirmation of grant [**B. J. Bartoo, R.M.**]. Clearly, these magistrates did not have the necessary pecuniary jurisdiction to entertain the matter, even assuming the lowest estimated value for the disclosed estate.

12. Moreover, as regards the question of territorial jurisdiction, the proper court in which this cause ought to have been instituted, if the estate's value was below KShs.20 million, was by dint of Section 49 of the Law of Succession, the Chief Magistrate’s Court in Mombasa. While the orders of **V. Kachuodho** and **B.J. Bartoo** cannot stand for want of pecuniary jurisdiction, the anomaly regarding the territorial jurisdiction is curable under the proviso to Section 49 (1) of the Law of Succession Act.

13. Pursuant to the findings above, this court is satisfied that the proceedings to obtain the grant issued and confirmed in the lower court were defective in substance. Accordingly, the court hereby nullifies the said grant and certificate of confirmation of grant. Consequently, the court is of the view that prayers 2, 4, 5, 6, 8, and 11 in the Summons General filed on 31st July 2018 are superfluous, as the nullified grant and certificate are now of no effect and confer no further authority upon **Milka** and **Patrick**. The court hereby orders in regard to prayer 3 of the said Summons General that the **Thika Chief Magistrate’s Succession Cause No. 434 of 2017 – In the matter of the Estate of Charles Chege Gitau** be transferred to the High Court of Kenya at Kiambu and be housed within the present file for purposes of further proceedings in accordance with the final order herein.

14. Further that, in lieu of prayers 7 and 13 the court grants the more general prayer 12 of the Summons General filed on 31st July 2018, requiring the erstwhile administrators to file into the court (i.e. the High Court at Mombasa) accurate and comprehensive accounts in respect of their administration of the estate from the date of the issuance of the nullified grant to the date of this ruling. Prayers 9 and 10 of the Summons General are declined.

15. The mode and manner of the management of the estate of the deceased, including collection of any rental or other income will, pending the issuance of a fresh grant be determined by the High Court of Kenya at Mombasa.

16. Concerning the outstanding prayers in the Summon (General) filed on 6th November 2018, namely, prayers 2, 4, 5, 6 and 7, these may if the Applicants deem it necessary, be argued in that court. Prayers 3 and 8 of the said Summons General are a repeat of prayers 6 and 13 of the Summons General filed on 31st July 2018 and are therefore spent.

Finally, in view of the findings and orders made herein, the instant succession cause together with the lower court file will be removed to the Registry of the Family Division of the High Court of Kenya at Mombasa. The matter will be placed before the Judge on 20th June, 2019 for necessary directions.

Parties will bear own costs.

DELIVERED AND SIGNED AT KIAMBU THIS 30TH DAY OF APRIL 2019

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C. MEOLI

JUDGE

In the Presence of:-

Mr. Macharia for the Applicant

Respondents – Absent

Court Assistant - Kevin