



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION 1421 OF 1995
IN THE MATTER OF THE ESTATE OF GITU WANG'ANG'A
JUDGMENT

The deceased died in Kiambu District, Central Province on 13th October 1987. This is according to the certificate of death of serial number 159899 dated 30th October 1987.

Stephen Waithaka Gitu and Peter Kamweru Gitu on behalf of the deceased's family filed a consent dated 27th June, 1995 in which it was agreed that Ruth Waithera Gitu, their mother and widow to the deceased, should be the sole administrator of the entire estate of the deceased, G. Kamonde Advocates filed the Consent on 7th June 1995 stating that they read the contents of the consent to the widow, Ruth, in the Kikuyu language and she understood the document.

On 20th June 1995, the administrator, widow of the deceased filed petition and listed the following are the persons surviving the deceased:

- 1. Ruth Waitheru- Widow**
- 2. Francis Ng'ang'a- Son**
- 3. Grace Njeri- Daughter**
- 4. David Kiarie- Son**
- 5. Stephen Waithaka- Son**
- 6. Peter Kimweru- Son**
- 7. Margaret Wanjiru- Daughter**
- 8. Anne Njoki- Daughter**
- 9. George Mburu- Son**

The following is a list of the properties left behind by the deceased:

- i. Komothai / Karatina /396**
- ii. Komothai / MbariYagi / 417**

iii. Thome Farmers Phase 1

iv. Motor Vehicle KVJ 209

v. Motor Vehicle KHW 965

vi. Kingunda Coffee Factory

The grant was issued on 23rd August 1995 to the administrator, widow of the deceased. Later, the Administrator filed summons of confirmation of grant on 28th June 1996. Of the children of the deceased, Stephen, Peter, Margaret, Anne and George signed consents except Grace, David and Francis did not sign consent to confirm the grant.

Thereafter, Francis Nganga and David Kiarie filed application for revocation of grant on 9th August 1996 and they protested that the administrator did not consult or inform and disclose to them that she petitioned a grant of letters of administration. She used proceeds from KCB account and bought some land Gatamaiyu/Kabuchage/596 and registered in her name.

A replying Affidavit was then filed by the Petitioner on 3rd October 1996 in which she reiterated that it was the deceased's wish that she be the sole administratrix to his estate. All the other children except the two refused to sign the above stated consents.

The Administrator also stated that out of the parcel of land number Komothai/ Karatina 396, the Objectors together with Stephen Waithaka have shared a total of 6.9 acres out of the 15 acres. The Objectors lived on the said piece of land even before the demise of their father, the deceased. They live on the land to date. They withheld share certificates of Thome and Thome II and the parcels remain untransferred according to the wishes of the deceased to date.

On 20th June 1997, Certificate of Confirmation of Grant was issued to the widow of the deceased, Ruth Waithera Gitu and as administrator to hold the properties of deceased's estate in trust for the beneficiaries.

On 15th September 2015, a Summons for Revocation of the Grant was filed by the Administrator and sought that a new Grant be issued to Ruth Waitheru, Francis Nganga and David Nganga as joint administrators; the apportionment and distribution made in respect of the estate of the deceased be cancelled or revoked together with all titles issued hereto pursuant to the subdivision of Komothai Karatina 396, Komothai/ Mbari Yaigi 417 and Kiangunda Coffee Factory and the said estate be shared among the beneficiaries in equal share respectively. They based on the grounds on unfair distribution and inability of the Administratrix to supervise and ensure equitable distribution due to her advanced age and ill health.

All beneficiaries signed a consent dated 28th October 2015 to issuance of new grant and filed on 10th November 2015 thereto except Stephen Waithaka, George Mburu, Grace Njeri.

The Administrator /Applicant in her written submissions through filed on 24th October 2015 admitted that distribution was unfair and she would like her sons, Francis and David to be co-administrators. She also stated that she was not part of the survey process that was done on the property. She attended the Land Control Board; however the Protestors failed to attend but later went to the Lands Office and caused various divisions on the property and processed the titles.

The Respondents filed written submissions on 8th November 2016 in which they stated that titles were issued in 1998 and no beneficiary complained. Stephen, Peter and George shared in Komothai/Mbari Yaigi/ 417. Thome which had been left out in the Succession Cause went to Margaret and Aim which they disposed to third parties. The Respondents object to the revocation of grant and a new one issued and redistribution done as it will distort the settlement and interfere with the subdivision already done.

ISSUES

1. Should the grant issued on 23rd August 1995 and confirmed on 20th June 1997 be revoked or annulled under **Section 76 of Law of Succession Act**?
2. Should redistribution of the estate be conducted afresh in spite of survey, subdivision and issuance of titles on the suit properties.

DETERMINATION

The grounds of the revocation and annulment of grant are that the Administrator, widow of deceased failed to consult, inform and obtain consents from all beneficiaries to be appointed administrator and obtain grant. Secondly, that she did not disclose that she petitioned for letters of administration and thirdly, that she withdrew proceeds from KCB account and bought land in her name without knowledge and approval of other beneficiaries.

Section 66 of Law of Succession Act; prescribes that the surviving spouse ranks in priority as administrator, alone or with some of the children. She was appointed as such with consents of some of the children. She obtained confirmed grant again without consents of all the children of the deceased. Be that as it may she applied for revocation and annulment of grant on the basis that she realises that she did not distribute the estate as required, some siblings have larger portions than others of the suit properties. She conceded that she is now advanced in age and has illhealth and would require to administer the estate with the 2 Objectors Francis Nganga and David Kiarie and to ensure fair distribution of the estate. The application of revocation is granted as filed by the Applicant/administrator. However; Francis Nganga is deceased and cannot be Co - administrator and he shall be replaced by Stephen Waithaka.

On the 2nd issue whether there should be distribution of the land parcels, this Court finds the Respondents' objection genuine and valid in the circumstances for the following reasons;

- a) the survey, subdivision and issuance of titles have been done especially with regard to Komothai/Kiratina/396 and each beneficiary has in the last 20 years, settled and developed or sold their portion with regard to the parcels of land; each of the beneficiaries has developed their portion and incurred financial input that will not be compensated in case of redistribution and withdrawal of titles. In any case the subdivision was as per the deceased's wishes to the beneficiaries.**
- b) although Section 35 of Law of Succession Act; prescribes equal distribution of deceased's estate, the reality on the ground is that it is rare that distribution is equal due to various prevailing circumstances.**
- c) Re distribution will only be undertaken if any of the beneficiaries did not and has not obtained any beneficial interest from the deceased's estate.**
- d) Before redistribution of land parcels that comprise of the deceased's estate to equal shares; it is on record and not controverted that the Objectors retained title documents for Thome properties and claimed he bought but no proof was tendered to prove or disprove this fact.**
- e) It is also on record, that Francis Nganga and David Kiarie were allocated by the administrator the land she bought with proceeds from KCB bank**
- f) The motor vehicles KUJ 209 and KHW 965 and Coffee Mill were sold and administrator distributed to the beneficiaries; Peter Kamweru, Margaret Wanjiru, Francis Nganga Gitu and David Kiarie Ksh 100,000/- each.**
- g) Komothai/Mbare Yaigi/47 was distributed to Stephen Waithaka Gitu, Peter Kamweru George Mburu Gitu**

Therefore for redistribution to be undertaken then it shall entail all assets that have been distributed from the deceased's estate.

From the above consideration there is practically no legal or factual basis to conduct redistribution and if so all assets must be complied together to allow fair and equal distribution. this is not possible after almost 20 years and taking into account the administrator is advanced in age and health.

DISPOSITION

1. The application for revocation and annulment of grant is granted and a new fresh grant is issued in the names of ;

1) Ruth Waithira Gitu

2) David Kiarie

3) Stephen Waithaka

2. There shall be no redistribution of the deceased's estate unless any of the children of the deceased has not been allocated any part of the deceased's estate. If so, there should be land available to be bequeathed to the said beneficiary.

3. All beneficiaries shall reside on the spot allocated, developed, cultivated on the suit property and retain the title issued.

4. The widow and administrator of the estate has life interest over the estate and was entitled to utilize funds from deceased's account for her upkeep.

DELIVERED DATED & SIGNED IN OPEN COURT ON 16TH JUNE 2017.

M.W.MUIGAI

JUDGE