



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1010 OF 2012
IN THE MATTER OF THE ESTATE OF FRANCIS GITAU KARURU (DECEASED)

RULING

1. The deceased herein died on 6th September 2003 at the Kenyatta National Hospital at the great age of 80.
2. Representation to his estate was sought in Kiambu RMCS No. 287 of 2011, in a petition lodged therein by Grace Muthoni Gitau, in her purported capacity as widow of the deceased. She expressed the deceased to have been survived by herself and four sons, being George Githinji, Stephen Ngoce, Simon Muthee and Daniel Maruri. He was said to have died possessed of Kabete/Kibichiku/1395.
3. The petition therein was published in the *Kenya Gazette* of 11th November 2011 in Gazette Notice No. 14232. A grant of letters of administration was duly made on 11th November 2011 and issued on 16th November 2011.
4. The said grant was confirmed through an order made on 3rd May 2012 in an application dated 12th April 2012. The sole asset was distributed as follows –
 - a. Grace Muthoni Gitau - 0.547 hectare;
 - b. Daniel Maruru Gitau – 0.344 hectare;
 - c. George Githinji Gitau, Stephen Ngoce Gitau and Simon Muthee Gitau – 0.142 hectare equally;
and
 - d. Road access – 0.103 hectare.
5. On 17th May 2012, a summons for revocation of grant was lodged in this registry by Virginia Wambui Kamau, seeking revocation of the grant made on 11th November 2011 to Grace Muthoni Gitau. She states, in her affidavit sworn on 16th May 2012, that she was a daughter-in-law of the deceased, being the widow of his dead son, Joseph Kamau Gitau, who died on 30th November 2011. The said Joseph Kamau was a child of the deceased by his other wife, Gathoni Gitau, who died in 1958. She had four children, the dead Kamau and three married daughters. The applicant herself had six children with the dead Kamau. She alleges that her matrimonial home with Kamau was at Kabete/Kibichiku/1395. She complains that the administratrix had in her application for letters of administration concealed the first family, and had thereby caused the estate to devolve wholly upon her and her children.
6. Upon being served, the administratrix swore an affidavit on 29th April 2013 in reply to the application. She concedes that the facts about the family of the deceased were correct. However, she states that Kabete/Kibichiku/1395 was acquired by herself and the deceased after Gathoni Gitau had died. She asserts that although Joseph Kamau Gitau had been allocated somewhere to build on

Kabete/Kibichiku/1395 that did not entitle him to a portion thereof.

7. Directions were given on 24th June 2014 on the disposal of the application dated 16th May 2012, that the same be by way of written submissions. The court record reflects written submissions dated 2nd July 2015 by the respondent.

8. Revocation of grants of representation is provided for under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. A grant will be revoked on three broad grounds. One, in cases where there were problems with the process of obtaining the grant, occasioned by defects in the process or by fraud or misrepresentation. Two, where there are issues arising from the administration process - failure to collect assets, failure to apply for confirmation of grant within the stipulated timelines and failure to render accounts as and when required. The third situation is where the grant has become useless and inoperative.

9. From the facts placed before me, the applicant appears to be grounding her case on the first general ground, that there were problems with the process of obtaining representation. She avers that the administratrix concealed the existence of the first family and obtained the grant on the lie that the deceased was survived only by the administratrix and her children.

10. The law is quite clear on what should be disclosed in an application for grant of representation. This is dealt with in section 51(2) of the Act and Rule 7(1) of the Probate and Administration Rules. Of particular interest in this matter should be Section 51(2) (g) and Rule 7(1) (e) (i). In cases of intestacy, such as the present one, all the children of the deceased ought to be disclosed.

11. In the instance case, the administratrix did not disclose the children of the deceased by his deceased first wife, Gathoni Gitau. She concedes that there were such children, but claims that they were not entitled to a share in the property. Whether the said children were entitled to the property available for distribution or not is not germane at the stage of applying for representation, that is a matter of concern at the stage of the distribution of the estate. At the petition stage, Section 51(2) of the Act and Rule 7(1) ought to be complied with to the letter. Failure to comply with these provisions makes the grant liable to revocation.

12. I need not say more. There was non-disclosure of one side of the family of the deceased, the first house. The court was misled into believing that the deceased was survived only by the second house. That alone is sufficient ground for revocation of the grant herein.

13. The final orders to be made in the matter are –

- a. **That the grant made here in on 11th November 2011 to Grace Muthoni Gitau is hereby revoked;**
- b. **That the orders made on 3rd May 2012 confirming the grant are hereby set aside and the certificate of confirmation of grant dated 3rd May 2012 is accordingly cancelled;**
- c. **That all transactions carried out on the basis of the certificate of confirmation dated 3rd May 2012 are accordingly nullified;**
- d. **That the court file in Kiambu RMCSC No. 287 of 2011 shall be returned to the Kiambu law courts, with directions that a fresh grant of representation intestate be made out of that cause incorporating the first house of the deceased; and;**
- e. **That the applicant shall have costs of the application.**

DATED, SIGNED and DELIVERED at NAIROBI this 24TH DAY OF MARCH, 2016.

W MUSYOKA

JUDGE