



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CASE NO. 2135 OF 1995**  
**IN THE MATTER OF THE ESTATE OF ISAAC GACUGU GATHIA**

**WILSON GATINU GATHIA .....APPLICANT**

**-VERSUS-**

**DANIEL IRUNGU GACUGU.....RESPONDENT**

**RULING**

**PLEADINGS**

The Deceased died on 28<sup>th</sup> December 1994.

Through an Application of Summons for Revocation or Annulment of Grant dated 20<sup>th</sup> January 2014 by the Applicant, Wilson Gatinu Gathia sought the following orders-

1. **That the Grant of Letters of Administration issued to the Respondent on the 17<sup>th</sup> day of January 1997 in respect of L.R. No. Loc. 8/Gitura/Kairichi/220 and L.R. No. 8/Kaganda/111/112/113/114 is annulled.**
2. **That the cost of this Application be borne by the Respondent.**

The Application is based on the grounds that the Respondent, Daniel Irungu Gacugu fraudulently obtained grant of letters of administration. He made false statements to this court in order to obtain the said grant. The Respondent obtained the Grant in order to circumvent the Court Orders in **Muranga SRMCC No. 286 of 1993**. The orders were that the suit properties L.R. No. Loc. 8/Gitura/Kairichi/220 and Loc. 8/Kaganda/561 (later subdivided into Loc 8/Kaganda/1111, 1112, 1113 &1114)

**HEARING**

The hearing proceeded *ex parte* on 2<sup>nd</sup> February 2016, as the Application was undefended. The Respondent was served with a hearing notice for the hearing on 02<sup>nd</sup> February 2016 as confirmed by the affidavit of service dated 11<sup>th</sup> December 2015 sworn by the process server Douglas Githinji Mwereri.

The Applicant through learned Counsel Mr. Kideda informed the Court relying on the supporting affidavit of the instant application that the Respondent obtained Letters of Administration intestate on

17<sup>th</sup> January 1996 and the same was confirmed on 17<sup>th</sup> January 1997. The confirmed grant included the suit properties. The applicant filed an application for Annulment and Revocation of the said grant and confirmed grant filed on 23<sup>rd</sup> October 2003. The Respondent opposed the said application as per the Replying Affidavit filed on 9<sup>th</sup> February 2004. On 27<sup>th</sup> June 2007, Hon Justice Dulu revoked the grant of letters of administration.

The Applicant filed citations to the citees and the matter was listed for directions. On 9<sup>th</sup> December 2013 Hon Justice Musyoka instructed parties to file a fresh summons for confirmation of grant.

The Respondent re-applied for the confirmation of Grant while excluding the land parcels in dispute that is L.R. No. Loc. 8/Gitura/Kairichi/220 and L.R. No. 8/Kagunda / 1111/1112/1113/1114. When the Respondent did this it posed a hindrance on the Applicant and he is currently in no position to apply for Letters for Confirmation of Grant. It is evident that the Respondent is reluctant to apply for new certification and is stalling the Applicant therefore barring him from Petitioning for letters of Administration.

The Respondent has been silent on the Application even though it has been proven in this court that he was served and has not filed a defence to it. He had however re-applied Letters of Administration which were awarded to him and he excluded the land is L.R. No. LOC.8 /Gitura/Kairichi/220 and L.R. No. 8/Kagunda/ 1111/1112/1113/1114. The directions given by the Hon. Justice Musyoka clearly stated that he should have applied for fresh Letters of Administration in order to accommodate the Applicant as an Administrator.

The Applicant filed written submissions and reiterated the matter at hand.

### **ISSUE**

1. Should the grant of letters of administration issued to the Respondent on 17<sup>th</sup> January 1996 in respect of L.R. No. Loc. 8/Gitura/Kairichi/220 and L.R. No. 8/Kaganda/111/112/113/114 the suit properties be annulled and revoked?

### **DETERMINATION**

The gist of the Applicant's case is that the suit properties were registered in the name of the deceased Isaac Gacugu Gathia brother to the Applicant and father to the Respondent. The suit properties were registered in the deceased's name in trust for himself and the brothers. The dispute resulted in the suit filed in **Muranga Court SRMCC 286 of 1993** between the deceased and Applicant on ownership of the suit properties. The matter was referred for arbitration and an award was delivered on 14<sup>th</sup> March 1995 and adopted as an order of the Court on 20<sup>th</sup> March 1996. The award and judgment of the Court is that the suit properties shall be divided into 2 equal parts, one portion for the deceased's family and the other half for the deceased's brothers.

The ownership of L.R. No. LOC. 8/Gitura/Kairichi/220 and L.R. No. 8/Kagunda /111/112/113/114 and rights of parties was determined in the suit **Muranga SRMCC No. 286 of 1993** which adopted the arbitral award as judgment of the Court. The Arbitral award decision is;

***It is agreed***

***“Loc. 8 /Kagunda/561 be subdivided into two equal [portions] amongst Isaac Gachigi Gathia (deceased) and Wilson Gatimu Gathia (Applicant)***

***Loc.8/Gitura/Karaichi/220 be subdivided into two equal [portions] amongst Isaac Gachigi Gathia (deceased) and Wilson Gatimu Gathia (Applicant)”***

The award was adopted as judgment of the Court and there were 30 days to appeal. The deceased could

not lodge an appeal but if the Respondent had been dissatisfied with the arbitral award and judgment he should have appealed against it. Taking out Letters of Administration and obtaining the grant did not do away with the Court Order. The Respondent through his actions did not comply with the **Muranga SRMCC 286 of 1993** Court order.

On 25<sup>th</sup> June 2007 Hon Justice Dulu stated as follows;

***‘‘In accordance with the provisions of Section 76 of law of Succession Act, this Court has jurisdiction to revoke and annul letters of administration material information. It is my finding that the letters of administration herein obtained by the Respondent by concealment of material information. It was a fatal error. I revoke the same.’’***

The grant of letters of administration issued to the Respondent on 17<sup>th</sup> January 1997 was revoked. On 9<sup>th</sup> December 2013, Hon Justice Musyoka confirmed revocation of the confirmed grant and instructed parties to file fresh summons for confirmation and comply with the arbitral award and judgment of the Court.

The Court orders of **Muranga SRMCC 286 of 1993**, of the High Court Orders are valid orders of the Court. The parties shall comply in the absence of a review or appeal. Therefore this Court which is of equal competent jurisdiction cannot sit on appeal and vary the said orders instead ought to enforce these orders.

Therefore, since the grant obtained on 17<sup>th</sup> January 1996 was on reliance that the Respondent could deal with the suit properties exclusively having concealed the arbitral award and court judgment, the grant is vitiated by fraud and concealment. Secondly, if the grant remains in force as is it will serve to hinder and prevent compliance of the various valid and legal orders of the Court, that the suit properties shall be divided equally between the deceased and the Applicant.

Thirdly, the Respondent despite service of the application and hearing notice, did not enter appearance, file any documents or explain any circumstances for this Court to consider. The Applicant’s version remains uncontroverted and has proved his case on a balance of probabilities.

## **COURT ORDERS**

For these reasons, this Court finds merit in the Application filed on 24<sup>th</sup> January 2014 and grants the following orders;

- 1. That the Grant of Letters of Administration issued to the Respondent on the 17<sup>th</sup> day of January 1997 in respect of L.R. No. Loc. 8/Gitura/Kairichi/220 and L.R. No. 8/Kaganda/1111/1112/1113/1114 is annulled.**
- 2. A new grant to issue forthwith in the joint names of the Applicant Wilson Gatinu Gathia and the Respondent Daniel Irungu Gacugu to administer the suit properties L.R. No. Loc. 8/Gitura/Kairichi/220 and L.R. No. 8/Kaganda/1111/1112/1113/1114.**
- 3. The administrators to carry out their statutory duties under Section 83 of the Law of Succession Act Cap160 and file summons for confirmation of grant over the suit properties**
- 4. Each of the parties is at liberty to apply**
- 5. Each party to bear its own costs**

**DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY, 2016**

**M.W. MUIGAI**

**JUDGE**