



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 396 OF 2000**

(IN THE MATTER OF THE ESTATE OF JANE WARUGURU GORDON (DECEASED))

**CHRIS GITHINJI RWENGO.....APPLICANT**

**VERSUS**

**SPERANZA NJOKI GITHINJI.....RESPONDENT**

**RULING**

On the 26th February, 2013, the applicant filed a summons dated 22nd February, 2013 seeking the following orders:-

- a) The Court be pleased to issue an order calling for Nyeri High Court Succession Cause No. 1057 of 2009 and hear the two causes together.
- b) The letters of administration issued to Speranza Njoki Githinji in this matter on 21.6.2012 be annulled and an appropriate grant de bonis administratis be issued to Chris Githinji Rwengo.
- c) The honourable court be pleased to restrain the respondent, her siblings, agents and or servants herein from intermeddling with the estate, the subject matter in the two causes pending the determination of this cause.
- d) The costs of this application be provided for.

The summons was filed under **section 74** of the **Law of Succession Act, Cap. 160** and rules **44** and **73** of the Probate and Administration Rules; it was supported by the applicant's own affidavit sworn on 22nd February, 2013.

The applicant has sworn that he is the executor of the will of John Carrie Gordon who was also known as **Gordon Carrie Rennie** and who, prior to his demise, was the administrator of the estate of the deceased in this cause.

**Gordon Carrie Rennie** himself died in September, 2009 and the administration of his estate is the subject in this Court's Succession **Cause No. 1059 of 2009**.

According to the applicant, the estate of **Jane Waruguru Gordon** and that of **Gordon Carrie Rennie** are by and large the same; the beneficiaries of these two estates are also the same people. The applicant has deposed that due to these commonalities, the two causes should be heard together.

Even then, the applicant has sworn that the late **Gordon Carrie Rennie** had distributed the estate of **Jane Waruguru Gordon** before his demise following the confirmation of the grant of letters of administration made to him and that each of the beneficiaries of the estate had their respective shares transmitted to them in accordance with the certificate of confirmation of grant.

As for the respondent's representation of the deceased's estate in this cause, the applicant has deposed that the respondent obtained the grant of letters of administration by misrepresentation of facts and her bid to have the grant confirmed was only thwarted when counsel for the applicant alerted the Court that the respondent had abused the court process to obtain the grant and to seek for its confirmation.

The respondent has opposed the application and in the replying affidavit she swore in this regard she said that consolidation of the two causes would compound issues rather than simplify them. On her appointment as the administratrix of the deceased's estate, the respondent swore that the appointment was above board and there was nothing sinister about it.

The respondent also disputed the applicant's contention that the estate of the deceased has fully been distributed apparently because the assets comprising the estate are being claimed by the applicant as belonging to the estate of **Gordon Carrie Rennie**. She has denied the applicant's allegations that she is intermeddling for which she was appointed to administer and contends that she has dealt with the estate only as far as her powers as the administratrix would allow.

The record shows that when the deceased, **Jane Waruguru Gordon**, died on 24th May, 2000, the grant of letters of administration intestate to her estate was made to **John Rennie Carrie Gordon** more particularly on 10th September, 2001 after he petitioned for this grant in his capacity as the deceased's husband. Apart from himself, other persons listed in the affidavit in support of the petition for letters of administration as surviving her were named **Nyaga Githinji** (son), **Mary Muthoni Kariuki** (daughter), **Margaret Wanjiku** (daughter), **Muthee Kariuki** (son) **Speranza Njoki Githinji** (daughter) and **John Paul** (son).

The grant was subsequently confirmed on 19th April, 2002 and several assets comprising the deceased's estate are indicated in the schedule to have been distributed amongst all the persons who were named in the petition as the deceased's survivors.

It is also apparent from the record that after the grant was confirmed, at least two applications were made seeking to have it revoked; one application was struck out and the other was dismissed vide a judgment delivered by this court on 5th March 2009. There is no suggestion anywhere in the record or from any of the parties that the judgment of the Court has ever been challenged or upset; this implies that the grant of the letters of administration of the deceased's estate and the subsequent distribution of that estate by the Court as expressed in the schedule to the certificate of confirmation of grant remains the true status of the deceased's estate or what used to be her estate depending on whether it has been transferred to its intended beneficiaries.

The estate's previous administrator, **John Rennie Carrie Gordon**, died in September 2009; the contesting parties do not appear to agree on whether or not the deceased's estate had been transmitted to the deceased's survivors or beneficiaries before this administrator died.

According to the applicant, the estate had been transmitted and to quote his deposition in paragraphs 7 and 8 of the affidavit in support of his application, he said:-

**"7. THAT in the judgment of Kasango J dated 5.3.2009, the Court had dismissed the respondent's summons for revocation of grant and an existing injunction had been discharged. Annexed and marked c is the copy of the said Judgment/order.**

**8. THAT thereafter the deceased petitioner had proceeded to register the transmissions per the certificate of confirmation. The respondent and her sibling (sic) had taken steps to take their entitlement in Enderasha/Mweiga296 which had been granted to them by the Court."**

The person described here as the “deceased petitioner” was **John Rennie Carrie Gordon**, the then administrator.

The respondent has disagreed and contrary to the applicant’s allegations, she has stated that the estate has not been transferred because the applicant is claiming it to be part of **John Rennie Carrie Gordon**’s estate; if I understand her correctly, she sought to be appointed, and was so appointed, as the administratrix of the deceased’s estate in place of **John Rennie Carrie Gordon** so as to complete the administration of the estate and have it transferred as ordered by the court.

Assuming that the applicant is right, the question whose answer I could not find from his application or the submissions by his counsel is what it is that he wants to administer if the deceased’s estate has been transmitted to its beneficiaries.

If on the other hand the administration of the deceased’s estate is not complete and had not been transferred to the beneficiaries entitled on intestacy at the time its previous administrator died, then the appointment by this court of deceased’s daughter as the administratrix to complete the administration and transfer the respective shares to the beneficiaries need not have raised any issue unless it was demonstrated prior to the appointment that she was not going to act in the best interest of all the concerned parties. It must also be noted that appointment of an administrator or administratrix to administer a deceased person’s intestate estate is always subject to the discretion of the court although in making the appointment the court may consider, as a general guide, the preference provided in **section 66** of the **Law of Succession Act, Cap. 160**. That section provides as follows:-

**When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—**

- (a) surviving spouse or spouses, with or without association of other beneficiaries;**
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**
- (c) the Public Trustee; and**
- (d) creditors:**

**Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.**

The court must have considered this provision when it appointed the respondent to administer the deceased’s estate and there is nothing in the applicant’s application that suggests otherwise. After a careful consideration of this application I am not convinced that any reason has been offered why the Court should have exercised its discretion in any other way. Neither has the applicant given any satisfactory reason why him, and not the applicant, ought to have been appointed the administrator.

The applicant has argued that the respondent misrepresented facts to obtain the grant; that may well be so but if the appellant’s case is that the grant is vitiated by any of the grounds outlined in **section 76** of the Act then the proper course was not to file the kind of application that is before court.

The quest for consolidation of the two succession causes does not also appeal to me to be viable; as matter of fact, it is not practical for the basic reason that the court is dealing with the estates of two different deceased persons. Much as **John Rennie Carrie Gordon** and **Jane Waruguru Gordon** were husband and wife, they had their separate properties probably under their respective names; if this wasn’t the case, there would have been no need for **John Rennie Carrie Gordon** to petition this Court for grant of letters of administration to administer the estate of his wife.

The beneficiaries to the two estates may be the same persons but I cannot see how those estates can be considered as the same estate.

I have not considered the succession cause in respect **of John Rennie Carrie Gordon's** estate because the application before me is in respect of his wife's estate. As far as I can gather from the applicant, **Carrie Gordon** left a will whose validity is apparently in dispute in the succession cause in respect of his estate. Without pre-empting the decision the Court may arrive at in that cause, I cannot see how he could possibly have bequeathed property that he himself had presented to court as belonging to his deceased wife; if peradventure he did so, the question whether or not such bequest was valid or is bound to fail would be a legitimate question.

The applicant also urged this court to issue an injunction seeking to restrain the respondent from intermeddling with the "estate the subject matter in the two causes" pending the determination of this particular cause.

I have given my reason why I think the deceased's estate cannot be the same subject estate in the matter of the estate of **John Rennie Carrie Gordon** and therefore I cannot issue an injunction on what I think is a skewed presumption that the two estates are similar and transcend either of the two causes. If there is any reason for injunction in the cause involving the estate of **John Rennie Carrie Gordon**, then an appropriate application should be made in that cause and not in this cause.

I find the applicant's application is not merited and he does not deserve any of the orders he is seeking for. The application is dismissed with costs to the respondent.

**Dated, signed and delivered in open court this 29th July, 2016**

Ngaah Jairus

**JUDGE**