

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.283 OF 1986

IN THE MATTER OF THE ESTATE OF ELIJAH CHEGE KARANJA (DECEASED)

HARUN CHEGE KARANJA.....PETITIONER

VERSUS

HARRISON GUTU CHEGE.....1ST OBJECTOR

BERNADETTE MUTHONI KINYAN.....2ND OBJECTOR

JUDGMENT

Elijah Karanja Chege, the deceased (the deceased) to whose estate these proceedings relate died on 12th January 1978. On 5th May 1986, Harun Chege Karanja (the Petitioner) petitioned the court to be issued with a grant of letters of administration intestate in respect of the estate of the deceased. In the petition, the Petitioner listed the following as the beneficiaries of the estate of the deceased: Harun Chege Karanja (son), Rachael Wanjiku Chege (widow), Mary Njeri Chege (widow), Fredrick Karanja (son), Karanja Chege (son), Stephen Kinyanjui (son), Hannah Wairimu (daughter), Elizabeth Wanjiru (daughter), Margaret Nyambura (daughter), Nyawira Chege (daughter) and Wairimu Chege (daughter). In the initial petition, the Petitioner listed the assets comprising the estate of the deceased as: LR. No. Kiganjo/Mundoro/287 and Kiganjo/Mundoro/1. In a subsequent affidavit, the Petitioner indicated that the deceased had other assets namely LR. No. South Kinangop/260/800, Kiganjo/Mundoro/T.151, Kiganjo/Mundoro/T.147, Kiganjo/Mundoro/T.149, Share No.428 in New Kirita Company, Share No.627 in Kiriita Pyrethrum Growers Co-Op Society and Share No.137 in Mataara Tea Factory. Other properties listed included LR. Nos. Kiganjo/Mundoro/T.152, T.153, T.154 and T.156.

The grant of letters of administration intestate was issued to the Petitioner on 30th June 1987. The grant was purportedly confirmed on 10th June 1987. This was 20 days before the grant was issued. Subsequently thereafter, the Petitioner applied for the certificate of grant that was issued on 10th June 1987 to be rectified so as to include other properties that were subsequently discovered to belong to the estate of the deceased. The certificate of confirmation of grant including the new properties was rectified on 10th June 1988.

On 21st May 2005, Harrison Gutu Chege (1st Objector) filed an application under **Section 76** of the **Law of Succession Act** and **Rules 44** and **49** of the **Probate and Administration Rules** seeking to have the grant of letters of administration intestate and the certificate of confirmation of grant that was issued to the Petitioner revoked or annulled on the grounds that the said grant was fraudulently obtained after the Petitioner had made false statements and concealed from the court material information. In particular, the 1st Objector deponed that the Petitioner had excluded him, his mother and his siblings from the list of dependants and beneficiaries of the estate of the deceased. The 1st Objector swore that the deceased was married to his mother Esther Kabura Chege and bore with her seven children namely: Harrison Gutu Chege (the 1st Objector), Anne Wangui Chege (married daughter), Tabitha Wacu Chege (married daughter), Lydia Wairimu Chege (daughter), Lilian Wanjiru Chege (daughter) and Gabriel Karanja Chege (son). The 1st Objector deponed that the Petitioner had not obtained their consent before petitioning the court to be granted letters of administration intestate in respect of the estate of the deceased; neither had they been included in the schedule of distribution of the assets comprising the estate of the deceased when the Petitioner applied to the court for the said grant to be confirmed.

On her part, the 2nd Objector deponed that she was the wife of Harrison Kinyanjui Karanja (deceased), the brother of the deceased to whose estate these proceedings relate. She stated that her deceased husband was the elder brother of the deceased. He was born deaf and dumb. In 1954, the deceased persuaded her to marry her said brother on condition that he would take care of her. The deceased allocated her a six (6) parcel of land in LR. No.Kiganjo/Mundoro/287. She cultivated and occupied the said parcel of land until 1964 when her husband died. During the subsistence of their marriage, she was blessed with four (4) children, a son and three daughters. She deponed that in 1967, 3 years after the death of her husband, the deceased kicked her out of the said portion of land. She went back to live with her parents. It was her case that she was entitled to the said parcel of land on account of the fact that, if her husband was alive, he would have been entitled to the same. As dependants of her late husband, such entitlement devolved to her and her children.

In regard to the claim made by the 2nd Objector, Mary Njeri Chege, a widow of the deceased confirmed that indeed the deceased had convinced the 2nd Objector to get married to his deaf and dumb brother by the name Harrison Kinyanjui Karanja on condition that he would take care of her. The deceased gave the 2nd Objector and her husband six (6) acres of land which the 2nd Objector build a matrimonial home and planted tea crop. She confirmed that when the 2nd Objector's husband died in 1964, he left the 2nd Objector and her four (4) children on the land. She supported the 2nd Objector's application to be recognized, together with her children, as dependants of the deceased and therefore entitled to benefit from the properties that comprise the estate of the deceased.

The Petitioner swore a replying affidavit to the application seeking to revoke the grant of letters of administration intestate. The Petitioner denied the allegations made by the objectors to the effect that they were dependants of the estate of the deceased. In respect of the 1st Objector, the Petitioner stated that his mother was not a wife of the deceased and therefore the children born of her could not be considered as dependants of the deceased. In that regard, he explained that it was not necessary for him to include the 1st Objector and his siblings as beneficiaries of the properties that comprise the estate of the deceased; nor was he required to seek their consent before petitioning the court to be issued with a grant of letters of administration intestate. The Petitioner denied that the 2nd Objector was a beneficiary of the estate of the deceased or that she had any entitlement to be considered as a dependant of the deceased. Other affidavits were filed by the children of the 2nd Objector and by the siblings of the 1st Objector supporting the application for revocation of grant.

Directions were issued by the court to the effect that the issue in dispute, being the determination of the question of who the dependants of the deceased were, be resolved by the parties adducing *viva voce* evidence. Hearing commenced before Nambuye J (as she then was). The Learned Judge heard the testimony of the 1st Objector Harrison Gutu Chege, PW2 Stephen Karanja Chege and PW3 Esther Kabira. This court thereafter took over the proceedings and heard the testimony of the 2nd Objector Bernadette Muthoni Kinyanjui and her son John Karanja Kinyanjui in the absence of the Petitioner. The court proceeded with the hearing after it was persuaded that the Petitioner had been duly served. The court listed the case for mention on 28th January 2014 to receive the written closing submission from the parties. It directed that the Petitioner be duly served. He was duly served. He did not attend court on the scheduled date. This court reserved the case for judgment. This judgment is therefore written on the basis of Objector's evidence and without the benefit of oral evidence adduced by the Petitioner.

From the affidavits filed, and from the oral evidence adduced, it was the 1st Objector's case that his mother was married to the deceased. She was married under Kikuyu Customary Law. Her mother lived with the deceased until 1969 when they were separated. The 1st Objector testified that her mother and the deceased were not formally divorced. The 1st Objector and her siblings, save for the last born daughter, were born when her mother was still cohabiting with the deceased as husband and wife. The Petitioner cross-examined the 1st Objector and his witnesses. What emerged from the said evidence is that indeed the deceased was married to the mother of the 1st Objector but separated from her before his death in 1978. The 1st Objector and his siblings, save for the last born daughter, were born to the deceased and the

mother of the 1st Objector during the subsistence of the marriage. This court therefore holds that there was no reason why the Petitioner did not recognize and include the mother of the 1st Objector and her children save for the last born daughter as dependants of the deceased. Their exclusion meant that the Petitioner concealed from the court a material fact which should have been brought to the notice of the court at the time the petition for grant of letters of administration intestate was filed.

As regard the 2nd Objector, it was clear from the evidence adduced that she was the widow of Harrison Kinyanjui Karanja, the brother of the deceased. The said Harrison Kinyanjui Karanja was deaf and dumb. The deceased took care of him. He requested the 2nd Objector to accept to be married by his brother on condition that he (the deceased) would take care of her and her family. Evidence was adduced which established that indeed the 2nd Objector lived with Harrison Karanja Kinyanjui on a six (6) acre parcel of land part of LR. No. Kiganjo/Mundoro/287 until the demise of her husband in 1964. She was ejected from the land in 1967 by the deceased. Upon evaluating the evidence adduced, this court holds that the 2nd Objector is a dependant of the deceased by virtue of the fact that she and her children are entitled to inherit the share due to Harrison Kinyanjui Karanja (deceased).

In the premises therefore, this court will allow the application lodged by the objectors under **Section 76** of the **Law of Succession Act** seeking to revoke the grant of letters of administration intestate that was issued to the Petitioner. It was evident that the Petitioner fraudulently obtained the said grant after he had concealed from the court the fact that the deceased had other dependants who were entitled to be considered as beneficiaries of the properties that comprise the estate of the deceased. In the circumstances therefore, the grant of letters of administration that was issued on 30th June 1987 and confirmed on 10th June 1987 and rectified on 10th June 1988 is hereby revoked. This court holds that the 1st Objector, his mother and siblings, save for the last born daughter, are dependants of the deceased as provided under **Section 29(a)** of the **Law of Succession Act**. The 2nd Objector and her children are dependants of the deceased by virtue of the fact that they are entitled to the share from the estate of the deceased that is due to Harrison Kinyanjui Karanja (deceased) who died in 1964. The parties to this succession cause shall make submission before any Judge in the Family Division of the High Court for the determination of who shall be appointed to be administrators of the estate of the deceased and also consider the distribution of the properties that comprise the estate of the deceased to the beneficiaries. The Petitioner shall pay the costs of the proceedings so far to the Objectors. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2016

L. KIMARU

JUDGE