



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 1337 OF 2006

IN THE MATTER OF THE ESTATE OF GITHUA MUTONGA (DECEASED)

MIRIAM WANJIKU GITHUAAPPLICANT

- Versus -

FRANCIS MUTONGA GITHUA1ST RESPONDENT

RAHAB WAMBUI GITHUA2ND RESPONDENT

R U L I N G

1. Githua Mutonga the deceased to whose estate these proceedings pertain, died on 2nd July 1984. One of his widows, Rahab Wambui and his son Francis Mutonga Githua, the Respondents petitioned Kiambu Senior Resident Magistrate's Court in Succession Cause No. 225 of 1985, to be issued with a grant of Letters of Administration intestate to enable them administer the estate of the deceased. In their supporting affidavit the Respondents did disclose that the deceased was survived by two wives, Rahab Wambui Githua and Miriam Wanjiku Githua, one of the Respondents and the Applicant respectively. They also disclosed that the deceased was survived by 11 children who included Francis Mutonga Githua, who is a co-administrator and a son to the first wife who predeceased the deceased herein.

2. The adult children of the deceased from the two houses being Mburu Githua, John Mwaura, Kariuki Githua, Henry Kungu and Nashon Mungai filed form P & A 38 giving consent for the Letters of Administration to the estate of the deceased, to be granted to Francis Mutonga Githua and Rahab Wambui. The minor children who did not file consents on account of their ages were as follows:

From the 2nd house

1. P K G
2. M G "A"

From the 3rd house

3. K G
4. N G and

5. M G “B”

The interests of these minors in the estate were to be taken care of by their respective mothers.

3. The letters of Administration were issued on 3rd June 1986. On 5th August 1986 the Grant of Letters of Administration was confirmed notwithstanding the requirement of six months upon application by Francis Mutonga Githua. The only asset disclosed in the supporting affidavit, was a parcel of land known as Ndeiya/Makutano/476 comprising of 2.64 Hectares (6.06 acres), which was shared out equally to the three houses as follows:

1. Francis Mutonga Githua representing the first house2.02 acres
2. Rahab Wambui Githua representing the second house.....2.02 acres
3. Miriam Wanjiku Githua representing the third house2.02 acres

4. Twenty years later on 20th February 2006 the administrators filed summons for rectification of the grant. In the supporting affidavit thereto they deponed that they had, subsequent to the confirmation of the grant, discovered some assets belonging to the deceased which had been left out of his estate, at the time of petitioning for the Grant of Letters of Administration. These were said to be shares in Limuru Dairy Farmers Co-operative Society Ltd and KENATCO Transport Ltd respectively.

5. It was ascertained by drawing of lots and agreed that the shares in Limuru Dairy Farmers Co-operative Society Ltd would go to Rahab Wambui Githua as a whole, while the shares in KENATCO Transport Ltd would go to Miriam Wanjiku Githua as a whole. They prayed for and obtained orders for the certificate of confirmation of Grant to be rectified accordingly on 10th March 2006. It is those orders which provoked the application herein.

6. The Applicant filed Summons for Revocation and/or annulment of Grant on 12th June 2006. The Summons was brought under Section 76 of the law of **Succession Act Cap 160** of the **Laws of Kenya** and **Rules 44** and **55** of the **Probate & Administration Rules**. The Applicant is seeking to have the Grant of Letters of Administration and Certificate of Confirmation of Grant issued to Francis Mutonga Githua and Rahab Wambui Githua in Kiambu Succession Cause No. 225 of 1985 on 10th March 2006 revoked.

7. The grounds for the summons for revocation are that:

- a) The Grant was obtained fraudulently by the making of false statements;
- b) The Grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant;
- c) The proceedings to obtain the grant were defective in substance, and
- d) The application objects to the mode of distribution.

8. The gist of the application is that although the Applicant is one of the three (3) surviving Widows of the deceased, she was not involved in the process of petitioning for the Grant of Letters of Administration and the Confirmation of the said Grant. That she only learnt later that the Respondents had transferred the deceased's shares in Limuru Dairy Farmers Co-operative Society Ltd to the second Respondent.

9. Francis Mutonga Githua swore a replying affidavit dated 27th July 2006. In the said affidavit the deponent averred that the Applicant participated in the process which led to the two Administrators petitioning the court successfully for Grant of Letters of Administration. That when the two subsequent

assets were discovered, the Applicant participated in the distribution thereof by drawing of lots between Rahab Githua and herself. This was done on 22nd May 2006, in the presence of all the children of the deceased and three clan elders.

10. The court gave directions on 18th April 2007 that the matter would proceed by way of viva voce evidence. On the date of hearing the Applicant appeared and gave her testimony which reiterated the contents of her supporting affidavit. The Respondent did not attend to testify. During the hearing of this Succession Cause it was the Applicant's case that the 2nd Respondent was not entitled to the shares in Limuru Dairy Farmers Society Ltd because it is the Applicant who, in 1964 bought the cow that supplied the milk which they delivered to the society!

11. Deducing from the record it is my view that the Applicant participated in the distribution of the estate which, on the face thereof, achieved a high degree of equity. She then had a change of heart when she did not get the shares in Limuru Dairy Farmers Society Ltd and wants to have a second bite at the Cherry. The Applicant cannot truthfully aver that her house was not informed of the Petition in Kiambu Senior Resident Magistrate's Court when her two sons Nahashon Mungai and Mburu Githua filed consents to allow the two Petitioners to petition the court on behalf of the rest of the beneficiaries.

12. According to paragraph 16 of the affidavit in reply the Applicant accepted land parcel No. Ndeiya/Makutano/1036 which was her share out of the original parcel No. Ndeiya/Makutano/476. This in my view signified her agreement with the intents of the Certificate of Grant made on 5th August 1986 in which the said parcel of land had been so distributed. She also participated in the family meetings in which the domestic animals and the shares in the two companies were distributed. Her son took the minutes of that meeting. From the material before me I am unable to find that the grant was obtained fraudulently nor that the proceedings thereof were defective.

13. At some point the distribution of the estate of the deceased person must come to an end. It is doubtful that the interests of justice would be served by disturbing an estate that was distributed more than two decades ago, by revoking the Grant and requiring the process of distribution to commence afresh. In the circumstances I find that the summons for revocation of grant is lacking in merit and decline to grant the orders sought.

There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **21st** day of **January 2015**.

.....

L. A. ACHODE

JUDGE