

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2574 OF 2013

IN THE MATTER OF THE ESTATE OF GITAU GITHEHU (DECEASED)

MUNGAI GITAU.....APPLICANT

VERSUS

PAUL MUROKI GITAU.....RESPONDENT

RULING

1. The deceased Gitau Githehu died on 13th April 1983. The respondent filed petition seeking grant of letters of administration intestate. The petition was filed at Limuru in Senior Principal Magistrate's Court Succession Cause No. 134 of 2010. He introduced himself to court as one of the sons of the deceased. In the affidavit sworn in support given to him by his chief (Chief of Ndeiya Location in Kiambu District), it was indicated that the deceased had two wives (houses). The house of Monicah Kamene Gitau to which he and others belonged. Then the house of Njoki Gitau to which the applicant and others belonged. It was not in dispute that the deceased left one property, Ndeiya/Makutano/611 that measures about 4.9 acres.
2. On 3rd September 2012 the respondent was granted letters of administration. He filed an application for the confirmation of the grant, and at that stage the applicant filed the present application before this court seeking that the Cause be transferred to this court and that the grant issued to the respondent be revoked. The applicant's case was that the respondent was not the son of the deceased and yet he had petitioned for the grant. He stated that the respondent was not known to the family, and that it was fraudulent for him to claim to belong to the family. Lastly, the applicant stated that he had not consented to the filing of the petition, and neither had any citation been served on him.
3. The respondent filed a replying affidavit reiterating that he was the son of the deceased who was entitled to petition for letters; and that he was a beneficiary of the estate of the deceased. He stated that he had informed the applicant of the intention to file the petition besides serving him with a citation in the matter.
4. Directions were taken that parties do give oral evidence on the application for the revocation of the grant issued to the respondent, and that counsel do file written submissions.
5. The applicant testified that the deceased had only one wife, his mother by name Njoki Gitau. She had died in 1993. The deceased had 9 children with her. They included the applicant, the late Francis Waweru Gitau whose widow is Margaret Wanjiku Waweru (PW 2), Ernest Njunge Gitau (PW 3) and Lucy Wairimu Gitau (PW 5). Their evidence, as well as the evidence of the deceased's village mate Samuel Muthuma (PW 4), was that the deceased had no other wife, and that the respondent did not belong to this family. They each denied the respondent's claim that the deceased had another wife called Monicah Kamene Gitau. They stated that the respondent had occupied and built on the deceased's land after the deceased's death. He had not even attended

the burial of the deceased, they said.

6. The respondent testified and called Peter Ndungu Kigathi (DW 2), James Gitau Kinyua (DW 3), Grace Njoki Waweru (DW 4) and John Karuko Waweru (DW 5). DW 5's father and the deceased were brothers. DW 4's father and the deceased were brothers. DW 3 and DW 2 were neighbours of the deceased. Their case was that the deceased had two wives. The first was Njoki Gitau who had children with him. In the early 1970s the two separated. Njoki went away with the children. The deceased then married Monicah Kamene Gitau with whom he got three children including the respondent. She still lives on the land. During the lifetime of the deceased, they said, the deceased shared his land into two, one parcel for each house. After he died the children of Njoki came to claim the land. DW 2 is the village elder and testified to this. The witnesses further testified that the family's dispute was heard by the chief and that led to the respondent filing the Cause at Limuru Court. They stated that all the family members attended the meeting. I note that the chief's letter that the respondent filed in court when petitioning for grant names the two wives and the children as being the beneficiaries of the estate of the deceased.
7. The applicant was represented by Mr Musyoki and the respondent was not represented. I carefully followed the cross examination of the respondent and his witnesses.
8. From the record, the respondent took out citations which he served on the application and members of his family. This was done following the filing of the petition. Even when he filed the application for the confirmation of the grant he served the same on the applicant and his siblings. It follows that the allegation that the petition was filed without reference to him, or without him being cited, is not true. The respondent stated that the applicant and his family refused to cooperate in the filing of the petition. He wanted them to come along to file the petition. I saw and observed all the witnesses in the case as they testified. I am satisfied that the version of the respondent was the correct one. The deceased had two wives. The applicant belonged to one house and the respondent to another. Each house has other children. I find that the petition was filed with full knowledge of the applicant and his family, and that there was no intention on the part of the respondent to defraud the applicant or the estate.
9. The result is that the application for revocation of the grant that was issued to the respondent has no merit and is dismissed. The respondent filed an application for confirmation in the subordinate court, but the matter has now been transferred to this court. I direct that he files a fresh application for confirmation and to serve within 14 days from today indicating all the beneficiaries of the estate of the deceased and to propose what each one will get. On service, the applicant shall file a replying affidavit in which he will indicate who the beneficiaries of the estate are and shall propose how much of the estate each shall get. The parties shall then take a mention for directions. This is a family dispute. Each side will bear its own costs.

DATED and DELIVERED at NAIROBI this 25th day of November 2015

A.O. MUCHELULE

JUDGE