



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CASE NO. 246 OF 2009
IN THE MATTER OF THE ESTATE OF
GACHURU NGORANO..... DECEASED
AND
KARIUKI GEOFFREY GACHURU
BEATRICE WOTHAYA GACHURU..... PETITIONERS

RULING

BACKGROUND

1. KARIUKI GEOFFREY GACHURU and BEATRICE WOTHAYA GACHURU filed petition for the grant of letters of administration to the estate of GACHURU NGORANO in the High Court at Embu being Succession Cause No. 105 of 2005 and named the following survivors:
 - a. BEATRICE WOTHAYA - Widow
 - b. KARIUKI GEOFFREY GACHURU - Son
 - c. GEORGE GIKONYO GACHURU - Son
 - d. JOSEPH MUCHEMI GACHURU - Son
 - e. KONYORO GACHURU - Son
 - f. NJOGO GACHURU - Son

2. On 21st October 2005 GEOFFREY KARIUKI GACHURU filed an application for substitution of BEATRICE WOTHAYA GACHURU on the ground that she had died on 23rd July 2005 and on 28th September 2006 an objection to the making of grant was filed by the following daughters of the deceased.
 - a. CAROLINE MUTHONI GACHURU
 - b. ASSUNTA NJERI GACHURU
 - c. SPERANZA WAMBUI GACHURU

d. TERESIA WANGECHI GACHURU

3. On 26th September 2006 the 2nd petitioner GEORGE GIKONYO GACHURU filed an application for the transfer of the Embu case to this court and on 26th February 2009 W. Karanja J as she then was ordered the transfer of the cause to this court for determination.
4. On 27th June 2011 MUCHEMI GACHURU, KANYORO GACHURU NJOGO GACHURU took out summons for revocation or annulment of the grant issued to KARIUKI GEOFFREY GACHURU and GEORGE GIKONYO GACHURU on the ground that the administrators had deliberately failed refused and or neglected to apply for confirmation of the grant thereby failing to proceed diligently with the administration of the estate.
5. On 16th May 2011 Sergon J. ordered that the respondent do file application for confirmation of grant which application was duly filed on 17th May 2011 and the following mode of distribution proposed:

6. **I. THEGENGE/KARIA/486**

- a. KARIUKI GEOFFREY GACHURU - 1.63 acres
- b. GEORGE GIKONYO GACHURU - 1.63 acres
- c. JOSEPH MUCHEMI GACHURU - 1.63 acres
- d. KANYORO GACHURU - 1.63 acres
- e. NJOGO GACHURU - 1.63 acres
- f. ASSUPTA NJERI GACHURU 1.63 acres each to be
- g. TERESIA WANGECHI GACHURU held in trust on their
- h. SPERANZA WAMBUI GACHURU behalf by Kariuki Geoffrey
- i. CAROLINE MUTHONI GACHURU Gachuru, George Gikonyo

Gachuru, Joseph Muchemi Gachuru, Kanyoro Gachuru and Njogo Gachuru.

2.L.R. NO. AGUTHI/GATITU/2424

To be registered in the name of Charles Gitogo Ruggu.

3. **PLOT NO. 32 GIAKANJA:**

½ plot to be registered in the joint names of Kanyoro Gachuru and Njogo Gachuru and the other ½ to be registered in the name of Jane Wambui Gachuhi.

4. PLOT NO. 68 NDARAGWA

To be divided into equal portions among:

- a. Kariuki Geoffrey Gachuru - 11.5 Acre Appro.
- b. George Gikonyo Gachuru - 11.5 Acre Appro.
- c. Muchemi Gachuru - 11.5 Acre Appro.
- d. Kanyoro Gachuru - 11.5 Acre Appro.

- e. Njogo Gachuru - 11.5 Acre Appro.
- f. Asunta Njeri Kamiri *To get 11.5 acres in equal shares*
- Teresa Wangechi Ngoya *same to be held in trust by Kariuki*
- Speranza Wambui Ndirangu *Geoffrey Gachuru, George Gikonyo*
- Caroline Muthoni Gachuru *Gachuru, Muchemi Gachuru, Kanyoro*
- Gachuru, & Njogo Gachuru*

5. **PLOT NO. 23 KIAMWATHI**

To be registered to Caroline Muthoni Gachuru.

6. **NYERI MUNICIPALITY BLOCK 11/138/127**

To be registered jointly in equal shares in the names of

- a. Kariuki Geoffrey Gachuru
- b. George Gikonyo Gachuru
- c. Muchemi Gachuru
- d. Kanyoro Gachuru
- e. Njogo Gachuru

7. **EUASO NYIRO/SUGUROI BLOCK 11/211**

To be subdivided in 5 equal portions among the following.

- a. Kariuki Geoffrey Gachuru - 1.6 Acres
- b. George Gikonyo Gachuru - 1.6 Acres
- c. Muchemi Gachuru - 1.6 Acres
- d. Kanyoro Gachuru - 1.6 Acres
- e. Njogo Gachuru - 1.6 Acres

7. On 18th May 2011 the grant was confirmed as prayed.

APPLICATION FOR DETERMINATION

8. On 4th November 2013 the applicant herein filed an application under certificate of urgency for orders that:

- a. *Trust held over Thegenge/Karia/486 and Plot No. 68 Ndaragwa be dissolved and he applicants be registered as absolute proprietors in equal shares.*

9. The application was supported by the affidavit of CAROLINE MUTHONI GACHURU who deponed that the applicants are all adults and should each hold their shares absolutely and deal with it as deemed necessary. It was further deponed that after the confirmation of grant herein there arose a dispute between the beneficiaries as the petitioners were unwilling to complete the distribution which dispute was resolved by the chief of Ndaragwa.
10. In reply to the said application the 1st respondent filed what he terms a reply to the legal challenges and accusation leveled against me among others in court wherein he stated that there was no urgency on the application herein since the applicant did not raise any objection before the judge at the time of confirmation of grant.
11. He further submitted that if the trust is removed and absolute proprietorship given the same would be abused for the land would be sold since the parcel of land for daughter was specifically set aside as haven, a home, away from home a temporary refuge home to receive them as and when they have marital problems. He therefore prays that the application be dismissed.
12. I must point out that the respondent ought to have filed an affidavit on oath in response to the application herein and further the applicants herein should have taken out objection or filed protest to the proposed mode of distribution as the issue in dispute would have been resolved properly had the applicants filed a protest or taken out an objection to the proposed mode of distribution.

ISSUE

13. From the application herein and the reply thereto there is only one issue for determination.

a. Whether the trust imposed in respect of the shares of the applicants is valid.

14. From the document submitted by the 1st Respondent, what came out clear was that the land was to be set aside for the late mother which was to be for the benefit of the married daughters. The document is not clear on what would happen after the death of the mother of the applicants and the respondents.
15. At this stage of the proceedings the court is unable to determine the intention of the deceased and since the applicants are adults of sound mind who have been identified as beneficiaries of the estate of the deceased and their entitlement ascertained and further since some of the trustees appeared before court and confirmed that they have no objection to the applicants holding their shares absolutely, noble as the intention of the 1st Respondent are. The court finds that the trust created is a fetter to the rights and enjoyments of the applicants proprietary interest.
16. I would therefore allow the application herein and set aside the trust created by the petitioners in respect of the rights of the applicants by rectifying the confirmed grant herein but with a rider that should the applicants intend to sell their portion as alleged by the 2nd respondent, the first priority should be given to the other beneficiaries of the estate of GACHURU NGORANO.
17. This being a family dispute, the parties shall meet their own cost of this application.

Dated signed and delivered at Nyeri this 4th day of April 2014.

J. WAKIAGA

JUDGE

Read in open court.

J. WAKIAGA

JUDGE