



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 1973 OF 1994
IN THE MATTER OF THE ESTATE OF JOEL GITU KINGANGI-(DECEASED)
RULING

1. Joel Gitu King'ang'i died on 25th August 1981 Representation to his estate to his estate was sought on 30th September 1994 by his sons, John Mbugua Gitu and Joseph Njogu Gitu. A grant of letters of administration intestate was made to them on 7th December 1994.
2. In the petition lodged in court on 30th September 1994, it was expressed that he was survived by three sons, a daughter and a grandson being John Mbugua Gitu, Joseph Njogu Gitu, Teresiah Wathoni Gitu, Peter Ng'ang'a Gitu and Michael Kamau King'ang'i. He died possessed of an asset described as Dagoretti/Riruta/131.
3. The said grant was confirmed on 11th April 1997. The estate devolved upon the five named survivors of the deceased at disproportionate rates.
4. On 21st May 2013, Peter Gitu Gichuki launched an application in court dated 20th May 2013 asking that the grant made on 7th December 1994 and confirmed on 11th April 1997 be revoked. He founded the application on the ground that the estate of his mother, Susan Karugi Gichuki, a daughter was of the deceased, was not disclosed and therefore it was not provided for. He argues that the process of obtaining the grant was therefore defective and tainted by fraud and misrepresentation.
5. The application was placed before me on 21st May 2013 under certificate. I certified it urgent and directed that the administrators and all the beneficiaries be served. I fixed the same for directions on 11th June 2013. I do not have evidence of service of the said application, but the respondents were represented in court when the matter came up for mention on 11th June 2013.
6. There is nothing on record to show that the respondents ever replied to the application dated 20th May 2013. Instead, the administrators filed an affidavit on 25th July 2013 proposing the amendment of the certificate of confirmation of grant dated 11th April 1997. In the said affidavit the deponent expressly concedes that Susan Karugi Gichuki was indeed a daughter of the deceased.
7. I am satisfied that the application before me reaches the threshold set by *Section 76* of the Law Succession Act for revocation of grants, to the extent that it was not disclosed that the deceased had a daughter, Susan Karugi Gichuki, also deceased, who had children of her own. The non-disclosure of this information amounted to concealment of facts and a misrepresentation, making the process of obtaining

the grant defective. The grant made on 7th December 1994 is therefore liable to revocation.

8. I have discretion through not to revoke it, but instead make alternative orders. The deceased died in 1981. It is important that the distribution of this estate be resolved at the earliest possible time. Revoking the grant would delay the process further. It would be prudent in this case to leave the grant intact, but set aside the orders confirming it. This would pave way for the making of a fresh application for confirmation of the grant where the estate of Susan Karugi Gichuki shall so catered for.

9. The orders that are hereby made are as follows:-

1. That the orders made on 11th April 1997 confirming the grant herein are hereby set aside and the certificate of confirmation of grant founded on those orders is hereby cancelled;
2. That the children of Susan Karugi Gichuki shall be entered into the list of the persons who survived the deceased, Joel Gitu Kingangi;
3. That the administrators shall within 45 days apply afresh for the confirmation of the grant made on 7th December 1994 and in the said application they shall provide for the estate of Susan Karugi Gichuki;
4. That in the event of failure to comply with Order (3) above, the grant made on 7th December 1994 shall stand revoked; and
5. That the matter shall be mentioned after 45 days for compliance.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May 2014.

W. MUSYOKA

JUDGE

In the presence of Mrs. Keitany advocate for the respondent.