



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 467 OF 2013

IN THE MATTER OF THE ESTATE OF SERAH WAIRIMU GACHUHI (DECEASED)

VERONICAH NGENDO GAITHO.....1ST APPLICANT

JOHN NJUGUNA GAITHO.....2ND APPLICANT

VERSUS

GEORGE GAITHO GATHECA.....RESPONDENT

JUDGMENT

1. The deceased herein died on 24th April 2009 at Kerwa in Kikuyu. The respondent petitioned the Senior Resident Magistrate's Court at Kikuyu in **Succession Cause No. 60 of 2011** and was issued with a grant of letters of administration intestate. In the petition, he indicated the beneficiaries of the estate to be himself, his wife, JOYCE WACHEKE GAITHO and his neighbor MICHAEL KARANU NGIGI. He subsequently applied for the confirmation of the grant. JOYCE WACHEKE GAITHO and MICHAEL KARANU NGIGI gave him the consent. The confirmed grant was issued on 20th June 2012. The deceased land parcel MUGUGA/JET SCHEME/99 was shared as follows:-

- a. MICHAEL KARANU NGIGI – 0.01 Ha;
- b. the respondent 0.645 Ha and 0.101 Ha;
- c. JOYCE WACHEKE GAITHO 0.645 Ha and 0.101 Ha;
- d. Access road 0.103 Ha.

The parcels have since been registered in the respective names.

2. The 1st applicant is the first wife of the respondent. Together they have 10 children who include the 2nd applicant. On 1st March 2013 the applicants filed this application under **rules 49 and 73** of the **Probate and Administration Rules** to have the grant issued to the respondent revoked and the titles subject of the transmission cancelled. There was also the prayer that a prohibitory order does issue to stop any dealings in the estate land and the resultant parcels. The applicants' case was that they were not made aware that proceedings had been filed to succeed the deceased; the respondent had two wives and yet he had only disclosed one, JOYCE WACHEKE GAITHO; he had not disclosed that the 1st applicant and her children were beneficiaries to the estate of the deceased; MICHAEL KARANU NGIGI, a stranger, had been made a beneficiary to the estate;

the whole exercise was meant to disinherit the 1st applicant and her children, and was therefore fraudulent; and, lastly, that the Court at Kikuyu lacked the pecuniary jurisdiction under **section 48** of the **Law of Succession Act (Cap 160)** to hear and determine the Cause as the value of the estate was in excess of Kshs.100,000/=.

3. The respondent opposed the application by filing a replying affidavit. He stated that the 2nd applicant was his son who would only inherit the deceased through him. He acknowledged that indeed the 1st applicant was his first wife with whom he has children; that the family was living on the estate land and was entitled to benefit from the estate. That is why, he stated, he had got them 0.645 Ha. of the estate which he had registered in his name in trust for them.
4. Now that the respondent had got his second wife JOYCE WACHEKE GAITHO to consent to the administration of the estate and had given her a share of that estate, he was equally obliged to inform his first wife and provide her a share of the estate. She became entitled to be heard in the decision as to how much benefit she was going to get from the estate. Secondly, there is no indication in the Certificate of Confirmation of the grant that the respondent was going to hold 0.645 Ha in trust for the 1st applicant. In short, the respondent had disinherited the 1st applicant and her children.
5. The respondent stated that he had to sell $\frac{1}{4}$ of an acre to MICHAEL KARANU NGIGI, a stranger to the estate, to get money to file the Succession Cause. That agrees with the applicants that MICHAEL KARANU NGIGI was not a beneficiary to the estate of the deceased. A decision to sell any part of the estate had to receive the consent of all the beneficiaries. That was not done.
6. Under **rule 40(1)** of the **Probate and Administration Rules** and **section 71(1)** of the **Law of Succession Act** the holder of a grant who seeks the confirmation of the grant has to satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined. I find that this was not done in this case, and therefore the court has to intervene.
7. Further, the applicants stated on oath that the parcel of land MUGUGA/JET SCHEME/99 that was left by the deceased measured 1.7 Ha and that it was worth 5,000,000/=. The respondent filed a replying affidavit in which he did not deny the value. I accept the evidence of the applicants. Under **section 48** of the **Act**, the subordinate court had no jurisdiction to deal with the estate.
8. For conclusion, I allow the application and revoke the grant that was issued and confirmed to the respondent vide certificate dated 12th June 2012. The registration of land parcel MUGUGA/JET SCHEME/99 into the name of the respondent, or in any other name(s) is cancelled. In the avoidance of doubt, registrations of MUGUGA/JET SCHEME/4341, 4342, 4343 and 4344 are cancelled. The parcels shall all revert into the name of the deceased SERAH WAIRIMU GACHUHI. This Cause is hereby transferred to this Court for hearing and disposal. Costs of the application shall be paid by the respondent.

DATED and DELIVERED at NAIROBI this 21st day of November 2014

A.O. MUCHELULE

JUDGE