



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 3105 OF 2005

IN THE MATTER OF THE ESTATE OF PETER NJOROGE GACHIE

PETER NJOROGE GACHIE (deceased) died intestate on 10th May 2005 at the Aga Khan Hospital. He was resident in Kiambu prior to his death and was aged 34 years at the time of his death. **Pauline Waithira Njuguna, his wife**, survived him. She had no children. The deceased was also survived by his father, **Moses Gachie Njoroge**, and **his mother, Phylis Wanjeri Gachie**, and four brothers namely **Messrs John Kamau Gachie, Samuel Kiarie Gachie, Kenneth Mbugua Gachie, and James Mungai Gachie** all of whom were adults aged between 21 years and 33 years.

At the time of his death, the deceased owned a plot of land being Plot No.624 "A"/Residential at Kware Ongata Rongai. He left cash in his bank account at Barclays and his Estate was entitled to employment benefits from the City Council of Nairobi which paid him a net salary of Shs.8,202.40 in January 2005, just 4 months before he died.

The deceased's wife, Pauline Waithira Njuguna sought and obtained a Grant of Letters of Administration intestate on 19.6.2006.

On 20.7.2006, the deceased's father, Moses Gachie Njoroge, filed an Application by way of a Summons dated 19.7.2006 for revocation of the Grant made to Pauline Waithira Njuguna, his daughter-in-law. He alleged that the widow had concealed the names of the deceased's parents and siblings who were beneficiaries. It seems the deceased's father, Moses Gachie Njoroge, had moved this court on 16.12.2005 in Succession Cause No.3474 of 2005 for a Grant of Letters of Administration Intestate. It was objected to by the deceased's widow.

He had in October 2005 served a citation to the widow that he intended to apply for a grant in her stead unless she did so. The widow obtained a Grant as stated above on 19.6.2006.

At the time of his death, the widow's brothers-in-law were all adults. There is no evidence that any of them was a dependant of the deceased.

Plot No.624"A" Kware, Ongata Rongai is the main property in the Estate and it seems quite obvious from my perusal of the Affidavits that the fight over the Grant is in fact an attempt to wrest property from the hands of the widow.

There are two applications. The application by Summons dated 19.7.2006 seeks to have the grant revoked while the Application by Chambers Summons dated 7.4.2010 seeks injunctive orders to restrain the widow "from dealing in any way with the parcel of land known as 624 "A"/Residential at Kware Ongata Rongai." Both applications are by the deceased's father.

Under Section 76 of the Law of Succession Act, Cap 160, the court has power to revoke a Grant where the proceedings to obtain it were defective in substance or where the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case. It is contended by the deceased's father that the widow failed to disclose that the deceased had dependants. But he has proffered no evidence to support the allegation that either he or any of his sons was a dependant of the deceased. Although he also alleges that he was unaware of the Petition for Grant of Letters by the widow, he applied in H.C. Succession 3474 of 2005 for a citation directed to the widow that he himself would seek a grant of letters of Administration in the deceased's Estate if the widow did not. By that time, the widow had already applied for Grant of Letters of Administration intestate in the estate of her husband and there being no objection, the Grant was made to her on 19.6.2006. She was the right person to seek the grant. There were no children in her marriage with the deceased. The Application by the deceased's father does not disclose any grounds on the basis of which the court can invoke its powers to revoke the grant to the widow.

As regards the Application dated 7.4.2010, the widow is the Administratrix of the Estate. She is the only heir in absence of children and dependants. The deceased's father who has made the application has not shown on the balance of probabilities that he is either an heir and if so under what laws or is a dependant any more than his sons have. As he has no legitimate claim in the Estate of the deceased, his prayer for injunctive orders is made in a vacuum. It has no merit. It must fail.

I observe that the fact of the deceased's widow having been the deceased's lawful wife is not challenged. As a surviving spouse without children, and in absence of dependants, she is entitled to succeed absolutely to the Estate of her late husband and it does not matter whether the properties were bought by the deceased alone or by the deceased and widow jointly. If as it is alleged the Kiserian property was transferred to the widow before the grant was issued, that was irregular but as ultimately the widow is the only heir, equity looks on that as done which ought to be and the technicality raised does not hold water where, as here, the only beneficiary is the person to whom the property has been transferred.

I find no merit either in the application for revocation of Grant dated 19.7.2006 nor in the application dated 7.4.2010 seeking injunction orders. I dismiss both Applications and order that Applicant, Moses Gachie Njoroge, shall pay the costs of both Applications to the Respondent, Pauline Waithira Njuguna.

Dated at Milimani Law Courts, Nairobi, this 11th day of March 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. O. Ogessa of Ogessa & Co. Advocates for the Objector/Applicant

Mr. M. Mwaniki of Muri Mwanini & Wamiti Advocates for the Respondent

Mr. Kugwa – Court Clerk