



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 606 OF 2009

IN THE MATTER OF THE ESTATE OF WACHIRA GITHUKU – DECEASED

ELIZABETH WAMBUI

GATHUKU.....APPLICANT

VERSUS

ALICE WANJIKU

NGATIA.....RESPONDENT

JUDGMENT

ELIZABETH WAMBUI GATHUKU, the applicant herein, has taken out the summons dated 3rd July 2009 in which she applied for the grant issued in the joint names of the applicant and Rose Gathiga Wachira by the Karatina S.R.M.'s Court vide **Karatina S.R.M.C. SUCC. Cause No. 16 of 1996** revoked and or annulled on the ground that the same has become useless and inoperative. It is also said the distribution of the Estate is biased and the sharing is uncertain. The Summons is supported by the affidavit of the Applicant. Alice Wanjiku Ngatia filed a replying affidavit to oppose the application. Learned counsels appearing in the dispute recorded a consent order to have the application determined by affidavit evidence and by written submissions.

I have considered the grounds set out on the face of the Summons for revocation of grant and the facts deponed in the affidavits filed for and against the application plus the rival submissions. There is no dispute that the grant was issued in the joint names of Elizabeth Wambui Githuku and Rose Gathiga Wachira on 7th April 1998. On 19th April 2007, rose Gathiga Wachira passed away. The Applicant has urged this court to revoke the grant because it is not possible to confirm the grant for purposes of confirmation in the absence of the other administratrix. The Applicant is of the view that the grant has become useless and inoperative. This court has been beseeched to revoke the grant and issue a fresh grant to the Applicant to enable her distribute the Estate amongst her children including the Respondent.

The Respondent has opposed the application claiming that it is the Applicant's attempt to contest the manner of distribution having appealed in vain. It is said that the demise of one of the administrators is no reason for the court to revoke the grant in view of the provisions of *Section 81* of the Law of succession Act.

Before determining the dispute, let me set out the history behind this cause. Wachira Githuku, passed away on 25th May 1992 survived by his mother, the Applicant herein and Rose Gathiga Wachira, a widow and the Respondent, a sister-in-law. The deceased was the registered proprietor of a parcel of land known as **L.R. NO. MAGUTU/GAIKUY/256** where the respondent and her family reside. The applicant and rose Gathiga Wachira, deceased, filed **Karatina S.R.M. Succession Cause No. 16 of 1996** to succeed the deceased. The Respondent filed an objection. The Karatina court heard and determined the cause. The Applicant and Rose Gathiga Wachira were not satisfied hence they were prompted to file **Nyeri H.C. P & A Appeal NO. 78 of 2000**. The appeal was dismissed by Khamoni J. on 17th May 2006 for want of prosecution. The Applicant attempted to challenge Justice Khamoni's decision before the Court of Appeal in vain.

Having given the brief history of the cause, let me now consider the dispute before me. The main ground argued in support of the summons for revocation and or annulment of grant is that since the Applicant's co-administratrix is dead, the grant has become useless and inoperative. I do not think that is the correct exposition of the law. The fact that one of the administrators is dead does not render the grant useless. The law envisaged such an occurrence to take place. It suffices to reproduce the contents of *Section 81* of the Law of Succession Act which provides as follows:

“S.81 upon the death of one or more of several executors or administrators whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them.”

It is obvious from the above provision that the Summons for revocation of grant dated 3rd July 2009 is for dismissal for the same is without merit. Consequently the summons is dismissed with costs to the Respondent.

Dated and delivered at Nyeri this 25th day of February 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Mugo for Applicant and Mwangi holding brief Muthigani for the Respondent.