



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 147 OF 1994

IN THE MATTER OF THE ESTATE OF KARURI GACHOGU – DECEASED

DAVID GACHOGU KARURI.....APPLICANT

VERSUS

TERESIA KABUI KARURI.....RESPONDENT

JUDGMENT

On 21st July 2004, **TERESIA KABUI KARURI**, hereinafter referred to as “the Respondent”, was granted Letters of Administration in respect of the Estate of Karuri Gachogu, deceased. The aforesaid grant was confirmed on 23rd May 2007. **DAVID GACHOGU KARURI**, hereinafter referred to as “the Applicant” has now taken out the summons for revocation/annulment of Grant dated 22nd June 2009 in which he sought for the following orders:

(i) THAT the confirmed grant of letters of administration issued to the petitioner TERESIA KABUI KARURI on 23rd May 2007 be revoked.

(ii) THAT DAVID GACHOGU KARURI, being the eldest son of one of the wives of the late KARURI GACHOGU, be included as one of the administrators of the deceased’s estate.”

The summons is supported by the affidavit of the Applicant. The Respondent and Michael Maina Karuri each filed a replying affidavit to oppose the summons. Learned counsels appearing in this cause recorded a consent order with the approval of this court directing the dispute to be disposed of by affidavit evidence.

I have considered the grounds set out on the face of the summons for revocation and or annulment of grant plus the facts deponed in the affidavits for and against the summons. It is alleged by the Applicant that prior to his death the deceased had shown each of the four households a specific portion of his property. It is averred that the Applicant’s mother i.e. Waruguru Karuri, deceased, was given **LR. NO. MWERUA/KAGIO-INI/232** hence the same was not available for distribution. It is said that the same should have been solely distributed to her children instead. It is further alleged that Beatrice Muthoni

Kariuki was not entitled to **L.R. NO. 9395/12 KIGANJO** as she was not a bonafide purchaser of the property belonging to the deceased. It is argued that the Respondent never consulted nor involved the Applicant in determining the distribution of his father's property thus denying the Applicant and his siblings their rightful share of the Estate. The Respondent on her part opposed the Summons for revocation of Grant stating that all the beneficiaries had discussed and agreed. The Respondent annexed to her replying affidavit the agreement dated 1st July 2003 duly executed by the beneficiaries. The Respondent also averred that the Applicant was involved throughout the succession proceedings. The Respondent further indicated that the **L.R. NO. MWERUA/KAGIO-INI/232** formed part of the estate of the deceased hence it was available for distribution. **MICHAEL MAINA KARURI**, one of the beneficiaries, opposed the summons for revocation of grant by filing a replying affidavit he swore on 10th December 2009. He averred that the entire family discussed and agreed on the mode of distribution of the deceased's Estate. The deponent annexed to his affidavit a copy of a handwritten agreement the representatives of each family (household) signed before the D.O. Ndia Division.

Having considered the rival averments, I have formed the following view of the dispute now before this court. There is no doubt that the Applicant's application is brought under *Section 76* of the Law of Succession Act and *Rule 44* of the Probate and Administration Rules. In order for an applicant to succeed in such an application, one must establish all or either of the following *interalia*:

- (i) That the proceedings to obtain the grant were defective in substance.
- (ii) That 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.
- (iii) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.
- (iv) That the person to whom the grant was made has failed to proceed diligently with the administration of the Estate.
- (v) That the grant has become useless and inoperative.

The main complaints raised in this dispute are:

First that the Applicant was not consulted by the Respondent before the distribution of the assets. I have carefully perused the averments in the replying affidavits and it is obvious that the Applicant and the other beneficiaries of the Estate were substantially consulted and involved in the succession proceedings. There are agreements signed by the Applicant before the area chief and the District Officer. In fact the Applicant personally executed those agreements. The Applicant did not contravene the averments stated in the replying affidavits of the Respondent and Michael Maina Karuri. The Applicant therefore made false averments under oath. Even assuming that the Applicant was not consulted, I doubt whether that ground is one of those envisaged under *Section 76* of the Law of Succession Act. Secondly, it is said that some of the properties like **L.R. NO. MWERUA/KAGIO-INI/232** should not have been shared between the four households because the same had been bequeath to the applicant's mother, the late Waruguru Karuri. At the time of confirmation of grant, the Applicant failed to file a protest. In any case by the time of confirmation of grant, the aforesaid land was registered in the deceased's name, hence it was available for distribution. The Applicant was challenged to deny the fact that he executed the agreement selling **PLOT NO. 9395/12** Kiganjo to Beatrice Muthoni Muriuki. He refused to controvert the aforesaid averment. Since the applicant has previously deponed on false facts on oath, I am persuaded to believe the assertion of the Respondent that the Applicant was involved in the agreement which

disposed of the aforesaid plot to Beatrice Muthoni Muriuki.

In sum, I see no merit in the Summons for revocation and or annulment of grant dated 22nd June 2009. The same is dismissed with no order as to costs.

Dated and delivered at Nyeri this 11th day of February 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Mugo for the Respondent. No appearance for the Applicant.