



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

SUCCESSION CAUSE 2020 OF 2008

ANN NYAWIRA1ST APPLICANT
ERASTUS GICHOHI MWATHA2ND APPLICANT
MERCY WANGUI MWATHA3RD APPLICANT
CATHERINE NYOKABI MWATHA4TH APPLICANT
GRACE KAGURE MWATHA5TH APPLICANT
JANE NJERI MWATHA6TH APPLICANT
V E R S U S

HEZEKIAH WANGOMBE GICHOHI1ST RESPONDENT
PAUL GICHOHI MBUTHIA2ND RESPONDENT
CHARLES MURAYA GICHOHI3RD RESPONDENT
LUCINIA WANGUI MWATHA4TH RESPONDENT

R U L I N G

The deceased Mwatha Gichohi died on 24th April, 2006. He left a will dated 10th November, 2005. Letters of administration were issued on 26th May, 2009 and confirmed on 7th July, 2010 as per the will. On 30th July, 2010 the Applicants filed summons for revocation and annulment of the grant on the grounds that:-

- a) the grant was confirmed without giving a hearing to them as required by the rules of natural justice;
- b) the issuance and confirmation of the grant disinherited the 1st Applicant who is a former wife to the deceased and the 3rd, 4th, 5th and 6th Applicants who were the daughters of the deceased and therefore beneficiaries; and
- c) the proceedings to obtain the grant were defective in substance.

The supporting affidavit was sworn by the 3rd Applicant on behalf of the rest. She swore that the 1st Applicant is a former wife of the deceased and that the 1st, 3rd, 4th, 5th and 5th Applicants are the daughters of the deceased. They are all beneficiaries of his estate. She stated that the will was a forgery and not the last wish of the deceased and that, in any case, the deceased was old, seriously ill and not in such mental state that he could have made the will. In the alternative, that the deceased may have been unduly influenced to make the will. The result is that they were disinherited by the will. In the alternative, the will excluded them on basis of gender and is therefore unfair. Lastly, they allege they were not invited to the proceedings during the Grant of Probate and the confirmation.

With the summons was filed an application to have the Respondents, who are the executors of the will to whom probate was granted, by themselves, their servants and/or agents restrained by temporary injunction from distributing, transferring, disposing, wasting or in any other way interfering with the estate pending the determination of the application for revocation .

The 4th Respondent swore a replying affidavit in which she stated that the 1st Applicant was a wife of the deceased who was divorced following court proceedings annexed to the affidavit and marked as "A". The proceedings show the marriage had children whose custody was given to the 1st Applicant until they got to year 16. The 4th Respondent swore that the 1st Applicant subsequently moved in with one John Gakuu Mukunji (now deceased) with whom she lived as wife and husband. She went there with her daughter. Regarding the will, the Respondent stated that the deceased was aware of what he was doing and discussed the issue before making it. As to whether the deceased made or did not make provision for all his dependants, the Respondent responded as follows:-

“14: That in response to paragraph 14 I wish to aver that the deceased did make provision for all his dependants

and in the event that no provision was made in respect of 1st, 4th, 5th and 6th applicants as suggested they do have recourse under the law though not under this proceedings.”

The Respondent stated that this was a testate matter and therefore the executors did not have any duty to inform anybody of the court proceedings and that, in any event, the application for a Grant of Probate was published in the Kenya Gazette.

The 1st Applicant may have been divorced and, according to the Respondents, not eligible to benefit from the estate, but it is agreed the marriage had children who are mentioned in the divorce proceedings. The deceased did not, on the face of things, provide for them. They are the 4th, 5th and 6th Applicants. They would under **sections 26, 27 and 76** of the **Law of Succession Act (Cap 160)** be entitled to complain. That is what they have done in the application for revocation and/or annulment of the grant. Until the application has been heard and determined, I find, the entire estate should be preserved. This is because when it is distributed each beneficiary will be entitled to deal with his/her share in any manner desired. Such property may eventually be beyond the reach of the Applicants and the court and therefore irreparable injury or loss may be occasioned. It is for these reasons that I grant the present application for injunction in terms of prayer 4. Costs shall abide the cause.

**DATED AND DELIVERED AT NAIROBI
THIS 6TH DAY OF OCTOBER 2010**

**A. O. MUCHELULE
J U D G E**