

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 478 of 2003

ESTATE OF GATHITU GITHAIGA DECEASED

AND

FLORENCE WANGECHI KABIRU.....PETITIONER/RESPONDENT

AND

ZEALIA WANJIRU MOGUKU1ST APPLICANT

GITHAIGA GATHITU.....2ND APPLICANT

GITHAIGA MBUTHIA.....3RD APPLICANT

RULING

Pursuant to the provisions of section 76(b)(c) of the Law of Succession Act, Zealia Wanjiru, applied for the letters of administration in respect of the estate of Gathitu Githaiga, deceased given to Florence Wangechi Kabiru to be revoked on the basis that the same were obtained fraudulently by the making of a false statement or by the concealment from the court of material factors important to this succession cause. The applicant further urged this court to determine the rightful heirs of the deceased's estate. It is said that the Petitioner failed to disclose all the beneficiaries. Florence Wangechi Kabiru, filed a replying affidavit to oppose the summons. She is of the view that the applicants have not shown sufficient interest in the deceased's estate hence they are not entitled to inherit anything. It is said that the deceased died without other relatives save for the petitioner and her late husband. The petitioner averred that she has been residing on the plot No. Gikondi/Thimu/242 for close to 35 years whereas the 1st and 2nd applicants live in Subukia while the 3rd applicant resides on parcel No. Gikondi/Thimu/241. I have taken into account the facts deponed in the affidavits filed for and against the summons for revocation and or annulments of grant. I have also considered the oral arguments presented by Mr. Mahan, learned advocate for the applicants. It is said the deceased had the 1st and 2nd applicants as his brother, sister and step son, while the 3rd applicant is said to be the deceased's step brother. The petitioner has been accused of failing to disclose the aforesaid facts. The petitioner has said that the applicants are strangers to her and that they are not related to the deceased. The petitioner averred that she was a daughter in law to the deceased.

I have carefully considered the allegations and the counter –allegations. The letter of the chief Gikondi Location dated 23/10/2003 and attached to the affidavit of Florence Wangechi Kabiru which was filed in support of the petition of the letters of administration has not been challenged. In the aforesaid letter the area chief clearly states that Florence Wangechi Kabiru was the deceased's daughter in – law. The chief further stated that she is entitled to inherit the deceased estate since her husband who was the deceased's son was also dead. The applicants have not challenged the averment on the relationship between the petitioner and the deceased. They have not challenged the fact that she has been in occupation of L.R No. Gikondi/Thimu/242 for over 35 years.

In my estimation the petitioner and her **children rank on priority as against the applicants. The**

petitioner was therefore entitled to exclude them in the list of heirs of Gathitu Githaiga *alias* Charles Gathitu Githaiga, deceased under section 66 of the law of succession Act.

Consequently I find no merit in the summons for annulment of grant dated 19th September 2006. The same is ordered dismissed with costs to the petitioner.

Dated and delivered this 30th September day of 2009.

J.K. SERGON

JUDGE