



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS) Succession Cause 113 of 1995

IN THE MATTER OF THE ESTATE OF ELIUD NGICHU GITHIRE (DECEASED)

GEORGE GITHIRE APPLICANT

VERSUS

JULIA NJOKI NGICHU RESPONDENT

RULING

Before me is a summons for revocation of certificate of confirmation of grant of letters of Administration (with written will) made to Julia Njoki Ngichu on 19th July, 1995.

It is premised under section 76 of the laws of Succession Act (Cap 160) and is supported by grounds set forth on the face of the summons and affidavit in support sworn by George Githire, the applicant on 25th May, 2002.

The said applicant had vide the cause no. 71 of 1995 earlier filed an application for citation to the present Administratrix Julia Njoki Ngichu. It was opposed as she had filed the present Petition on 19th January 1995. It is also true that the said citation was not based on any petition. It seems the said petition was filed by consent of all the beneficiaries including the applicant herein.

It is also clear from the records of the court that after obtaining grant on 4th April, 1995, the application to confirm the grant was made on 24th May, 1995 seeking the order despite the fact that six months have not lapsed from the date of issuance of grant of representation (with written will).

It can be presumed that the said leave was granted as certificate of confirmation of the grant was made on 19th July, 1995.

According to the Respondent / Administratrix the confirmation of the grant was as per the written will of the deceased dated 29th May, 1989.

The said will stipulated as under (As per its English translation produced and agreed by both parties).

ENGLISH TRANSLATION OF WILL DATED 29.5.89 OF ELIUD NGICHU GITHIRE (DECEASED)

Dividing of properties.

We, Eliud Ngichu Githire and my wife Julia Njoki have divided our two (2) farms KABUKU and

ITUNGI as follows:

KABUKU – comprises 24 acres. Remove 1 Acres which we give the P.C.E.A KAUUKU Church. It remains 23 ¼ Acres. We share among our 11 children, each child to take two (2) Acres. The remaining 1 ¼ Acres belong to Mr.& Mrs. Eliud Ngichu Githire and have been bequeathed as an appreciation gift to Julia Njoki Ngichu.

ITUNGI FARM – 208 Acres

Will be divided as follows:

Mr. Eliud Ngichu Githire and his wife Mrs. Julia Njoki Githire will take 29.6 Acres on the portion or side where there home is.

The remaining Acres will be divided as follows:

Each child will take 14.8 Acres. The 14.8 Acres share of Rahab Mukuhi will be added to the shares of the sons of Rahab and George Githire and Jim Njoroge will take 21.6 acres each.

NOTE:

- a) The remaining assets of the home which have not been shared out to anybody, belong to Mr. Eliud Ngichu Githire and his wife Julia Njoki Ngichu.
- b) The cost of subdivision (SURVEYING) will be borne by all the children who have been given portions of land.

WITNESSES PRESENT

1. Julia Njoki Kariuki Signed
2. Winnie Waringa Njonjo Signed
3. George Kariuki Marigi Signed
4. Kariuki wa Mwaniki Signed
5. Benson Njonjo Kiaria Signed

OWNERS OF THE PROPERTIES

ELIUD NGICHU GITHIRE thumb print

JULIA NJOKI NGICHU signed

CERTIFICATE OF TRANSLATION

I, JAMILA MOHAMED an advocate of P. O. Box 67233 Nairobi I decide that I have read and perfectly understood the language and character of the original will of Eliud Ngichu Githire which is written in the Kikuyu Language and that the above is a true and accurate English Translation thereof.

Mr. Gatitu the learned counsel for the objector relying on the said written will submitted that the only property given absolutely to the widow/Administratrix is 1 ¼ acres from – Kabuku property (which is the first property mentioned in the will).

As regards property no. 2 farm at Itungi – (208) Acres. Mr. Gatitu submitted that the

widow/Administratrix can only take half of 29.6 as the same was kept aside for her and the deceased. He supported his contention on the fact that he gave his late wife Rahab 14.8 acres and as she was not alive, the deceased directed that her share will be added equally to the shares of her two sons namely George Githire (The objector) and Jim Njoroge making their respective shares as 21.6 acres each.

Commenting on the note appearing after intervivos divisions of three properties it was contended by him that the rest of the estate was directed to be owned by the deceased and the Administratrix and thus Mr. Gatitu submitted that half shares of those properties belong to the estate and must be shared amongst the beneficiaries. He found support from the fact that widow/Administratrix has rightly devolved Njuno farm 2 Hillcrest Farm (Item Nos. 3 and 4) as being held by her in trust for all the children from both houses. He concluded by submitting that properties listed from item nos. 5 to 11 should also be shared and it was improper for the Administratrix to take the same absolutely especially the immovable properties.

As against the above submissions, the Administratrix, relying on her replying affidavit sworn on 23rd July, 2007, submits that the applicant has come before the court after span of 12 years since the grant was confirmed and he was aware of the filing of the Petition because he himself held several citation to her in HCC Succession Cause no 71 of 1995 which was responded disclosing the fact of filing of this petition.

I may tend to agree with the Administratrix, that the Applicant had failed to explain the long delay of 12 years even after knowing very well that this Petition was filed. The grant did annex the written will and thus the applicant cannot be heard to say that he was unaware of the Petition.

However, if the court itself finds that the certificate of confirmation was not as per the written will, it can rectify the same on its own accord in the interest of justice exercising its inherent powers.

I do see that the deceased had kept 29.6 acres for himself and the administratrix from Itungi farm. It is also true that the objector and Jim Njoroge got extra share from the shares of their mother who was not alive at the time of writing of the will.

But that does not mean that the deceased who was alive was surrendering his shares to the Administratrix from the wordings of the will.

I do cull out his wishes as giving half portions of his undivided shares to the administratrix as she has been declared specifically as an owner of the remaining properties along with the deceased which were all registered in the names of the deceased. Thus the deceased declared that he was holding his other properties for himself as well as for his living wife the Administratrix.

Considering the law that the widow in any event gets life interest in the estate properties (which is the half of his remaining properties except for two motor vehicles (item Nos. 9 and 11) M.A.P.A. shares valued at Shs.2000/= (item no. 8) 50 percent of all other assets i.e. Item Nos. 2(a), 5, 6, 7, and 10, shall be held by the Administratrix in trust for all the beneficiaries.

All other assets specified in other items shall be divided as specified in the certificate of confirmation dated 19th July, 1995.

Rectified certificate of confirmation of grant (with written will) be issued accordingly.

The objector shall bear the costs of Administratrix because of the delay in bringing the application on hearing.

Date, Signed and Delivered at Nairobi this 21st day of September, 2009.

K.H. RAWAL

JUDGE

21.9.09