



IN THE MATTER OF THE ESTATE OF

DAUDI GACHONDE – DECEASED

AND

ROSEBELL NJERI MURIUKI PETITIONER

VERSUS

VINCENT WANJOHI GACHONDE PROTESTER

RULING

Daudi Gachonde Wanjohi, hereinafter referred to as “*the deceased*” died intestate on 23rd July 1998. He was survived by:-

- (i) Shellomith Wanja Gachonde – widow
- (ii) Eudia Wandia Gitahi – daughter
- (iii) Catherine Wangui Wachira – daughter
- (iv) Vincent Daudi Mureithi – son
- (v) Weston Daudi Muriuki – son
- (vi) Eutyclus Daudi Muriuki – son

The deceased was not a poor man. He had 24 or so immovable properties spread in various parts of this country. He also operated several bank accounts in Nyeri as well as Karatina.

His sons, **Vincent Daudi Wanjohi (Vincent)** and **Eutyclus Daudi Muriuki (Eutyclus)** in the fullness of time jointly petitioned the High Court of Kenya at Nairobi for the grant of letters of administration intestate with regard to their deceased father’s estate. As there was no objection to the petition, a grant was duly issued to them jointly on 7th July 1999. However before the grant could be confirmed **Eutyclus** passed on. This was on or about 1st December 1999. His wife, **Rosebell Njeri Muriuki** by an application dated 22nd August 2003 sought to be substituted in this cause in place of her deceased husband aforesaid. On 16th December 2003 a consent order on the application was entered by **Waweru J** in these terms:-

“1. The grant issued jointly to Vincent Daudi

Wanjohi and Eutyclus Daudi Muriuki on 7th July

1999 be and is hereby revoked.

2. A fresh grant shall be issued forthwith jointly to Vincent Daudi Wanjohi and Rosebell Njeri Muriuki

3. The joint administrators may either jointly or severally apply for confirmation of that grant forthwith. If the application is filed by one administrator it shall be served upon the co-administrator as well as upon other beneficiaries.

4. Any person so served shall be at liberty to file an affidavit of Protest.

5. Mention on 03/02/04.

6. The summons dated 21/8/03 is hereby marked settled upon the above terms with costs in the cause.”

On 21st October 2008 the two daughters of the deceased, **Eudia Wandia Gitehi (Eudia)** and **Catherine Wangui Wachira (Catherine)** jointly filed an application seeking the revocation of the grant issued as aforesaid. They also prayed that a new grant be subsequently issued in their joint names. The application was necessitated by the fact that **Vincent** and **Rosebell** had refused to apply for the confirmation of the grant since its issuance on 16th December 2008. Yet the two continued to benefit from the rental income from the deceased properties to the total exclusion of the other beneficiaries, the applicants included.

When the said application came before **Gacheche J** for directions under rule 44(3) of the Probate and administration rules on 7th December 2008, the judge ordered the transfer of the cause to this court since the parties involved came from within the jurisdiction of this court. On 12th June 2009 when the cause came before me for further directions, **Eudia** and **Catherine** agreed to withdraw their application dated 21st October 2008 for the revocation of grant. This paved way for **Rosebell** to apply for the confirmation of grant. She initially proposed that the estate of the deceased be distributed in the following manner:-

(1) Shellmith Wanja: (i) Thaithi farm homestead 3 acres

(ii) Kahiraini farm

(iii) Ruiru land

(2) Vincent Wanjohi: (i) Kamariga farm

(ii) Thaiti farm $\frac{1}{3}$

(iii) Ngaini farm $\frac{1}{5}$

(iv) Blue Valley Building & Jekelewa

(3) Weston Muriithi: (i) Kihindwi farm

- (ii) Ragati Iriaini
- (iii) Thaithi farm $\frac{1}{3}$
- (iv) Ngaini farm $\frac{1}{5}$
- (v) Plot No. 131 Karatina
- (4) Rosebell Njeri Muriuki: (i) Bagureti/Narumoru
- (ii) Gathiini farm
- (iii) Plot No. 136 Karatina
- (iv) Thaithi farm $\frac{1}{3}$
- (v) Ngaini farm $\frac{1}{5}$
- (5) Eudia Gitehi Martin: (i) Ngaini farm $1\frac{1}{2}$ acre
- (ii) Homestead
- (iii) Hohwe $\frac{1}{2}$
- (6) Catherine Wangui Wachira: (i) Ngaini farm $\frac{1}{5}$
- (ii) Homestead $1\frac{1}{2}$
- (iii) Hohwe $\frac{1}{2}$ of the land

She also proposed that all beneficiaries share equally the Bush hotel.

The proposal by Rosebell was met with stiff opposition from **Vincent** on the grounds that **Rosebell** had left out several properties. He counter proposed that the estate be distributed as follows:-

(a) Plot No. BT/169 – Karatina Municipality (Developed)

Shelmith Wanja Gachonde – Room No. 9

Vincent Wanjohi Gachonce – Hotel/Kitchen

– Room Nos. 1 and 5 upstairs

and 3 and 5 downstairs.

Emily Wambui Muriuki – Room Nos. 2 & 6 ground floor

and 4 and 9 upstairs.

Rosebell Njeri Muriuki – Room Nos. 3, 7 and 9 upstairs

and 6 downstairs.

Eudiah Wandia Gitahi – On big shop (left, Room No. 2
ground floor and Room No. 8
upstairs.

Catherine Wandia Wachira – Room No. 4 upstairs

(b) L.R. Kirimukuyu/Kiria/598

Shelmith Wanja Gachonde – 3 acres (homestead)

Vincent Wanjohi Gachonde – 4 acres

Emily Wambui Muriithi – 3 acres

Rosebell Njeri Muriuki – 2 acres

Eudia Wandia Gitahi – 2 acres

Catherine Wangui Wachira – 2 acres

(c) Ngunjiri Market Plot No. 18 (shares) –

Vincent Wanjohi Gachonde

(d) Konyu Baricho Plot No. 873 –

Vincent Wanjohi Gachonde

(e) L.R. Kirimukuyu/Mutathi-ini/404

Vincent Wanjohi Gachonde – 7.4 acres

Emily Wambui Muriithi – 7.4 acres

Rosebell Njeri Muriuki – 15 acres

Eudiah Wandia Gitahi – 4 acres

Catherine Wangui Wachira – 4 acres

Each to get the portion she/he has developed.

(f) Narok/Mutara/BT/403 –

Vincent Wanjohi Gachonde

(g) Narok/Mutara/BT/1611 –

Vincent Wanjohi Gachonde

(h) Ruguru/Karuthi/404

Vincent Wanjohi Gachonde – 4 acres

Emily Wambui Muriithi – 3 acres

Eudiah Wandia Gitahi – 2 acres

(i) **Mathira/Kahidwi/2808** – Emily Wambui Muriithi

(j) **Nanyuki/Marura/B6/2442 (Endana)** –

Emily Wambui Muriithi

(k) **Plot NO. 31 Karatina Municipality** –

Emily Wambui Muriithi

(l) **Ragati/Iriaini Plot** – Emily Wambui Muriithi

(m) **Thaithi Plot No. 10** – Rosebell Njeri Muriuki

(n) **Plot No. 131, Karatina Municipality** –

Rosebell Njeri Muriuki

(o) **L.R. Kirimukuyu/Mutathi-ini/391** –

Rosebell Njeri Muriuki

(p) **Buruget/Naromoro BT/144** –

Rosebell Njeri Muriuki

(q) **Ngaini Plot NO. 15** – Vincent Wanjohi Gachonde

(r) **Karatina/Karindundu/BT/583** –

Eudiah Wandia Gitehi and Catherine Wangui Wachira

(jointly)

(s) **Mahigaini/Mutathi-ini/278** –

Eudiah Wandia Gitehi (Wangechi's)

(t) Hohwe Farm – Eudiah Wandia Gitehi,

Catherine Wangui Wachira

to share equally

(u) **Wanyoro (shares)** – Eudiah Wandia Gitehi and

Catherine Wangui Wachira

(jointly)

National Bank of Kenya Karatina Branch –

Vincent Wanjohi Gachonde

Barclays Bank – Rosebell Njeri Muriuki

Post Office Savings Account –

Catherine Wangui Wachira & Emily Wambui Muriithi

Karii Coffee Factory (Mathira) –

Vincent Wanjohi Gachonde and

Emily Wandia Gitehi

(v) **National Bank of Kenya** – Emily Wambui Muriithi

(w) **National Bank of Kenya** – Emily Wambui Muriithi

On the 24th July 2009 it was agreed between the parties that the application for confirmation of grant as well as the protest be heard simultaneously by way of affidavits on record and parties were at liberty to file further affidavits should it become necessary and written submissions as well. On 10th September 2009, **Rosebell** filed what she chose to call a supplementary affidavit. In the said affidavit she disputed the mode of distribution proposed by **Vincent** on the ground that no beneficiary should get preferential treatment against others. Therefore the entire estate of the deceased ought to be shared equally. That during his lifetime, the deceased had bequeathed hotel, store and kitchen in plot No.

Karatina/Township/B1/169 to **Eudia** and it was his wish that the same be inherited by her. She went on to depone that all the beneficiaries apart from **Vincent** had agreed that the deceased estate be shared as follows:-

(a) **Plot No. Karatina/Township B1/169** to be registered jointly

(b) **L.R. Kirimukuyu/Karia/598** to be shared as follows;

· Shelmith Wanja Gachonde – widow – 3 acres

Life interest (homestead) for all beneficiaries

· Vincent Wanjohi Gachonde – son – 3 acres

· Emily Wambui Muriithi (daughter in law) – 3 acres

· Rosebell Njeri Muriuki (daughter in law) – 3 acres

· Eudiah Wandia Gitahi – (daughter) – 2 acres

· Catherine Wangui Wachira – 2 acres

(c) **Ngunjiri Market Plot No. 18** (shares) –

Vincent Wanjohi Gachonde

(d) **Konyu/Baricho Plot No. 873** –

Vincent Wanjohi Gachonde

(e) **L.R. Kirimukuyu/Mutahi-ini/404** to be shared by the following in equal shares.

- Vincent Wanjohi Gachonde
- Emily Wambui Muriithi
- Rosebell Njeri Muriuki
- Eudiah Wandia Gitahi
- Catherine Wangui Wachira

(f) **Narok/Mutara/BT/403** –

Vincent Wanjohi Gachonde

(g) **Narok/Mutara/BT/1611** –

Vincent Wanjohi Gachonde

(h) **Ruguru/Kiruthi/404**

- Shelmith Wanja Gachonde – ½ Share
- Vincent Wanjohi Gachonde)
- Emily Wambui Muriithi)
- Eudiah Wandia Gitahi) Equal Shares
- Rosebell N. Muriuki)
- Catherine W. Wachira)

(i) **Mathira/Kahidwe/2808** – Emily Wambui Muriithi

(j) **L.R. Nanyuki/Marura/B6/2442 (Endana)** to be shared equally between:

- Eudia Wandia Gitahi
- Catherine Wangui Wachira

(k) **Plot No. 31 Karatina Municipality** –

Emily Wambui Muriithi

(l) **Ragati Plot No. 89** – Emily Wambui Muriithi

(m) **Thatithi Plot No. 10** – Rosebell Njeri Muriuki

(n) **Plot No. 136 Karatina Municipality** –

Rosebell Njeri Muriuki

(o) **L.R. Kirimukuyu/Mutathi-ini –**

Rosebell Njeri Muriuki

(p) **Buruget/Narumoro BT/144 –**

Rosebell Njeri Muriuki

(q) **Ngaini Plot No. 15 – Vincent Wanjohi Gachonde**

(r) **Karatina/Karindundu/BT/583 –**

Eudiah Wandia Gitahi and Catherine Wangui Wachira

(jointly)

(s) **Mahigaini/Karindundu/BT 583 –**

Eudiah Wandia Gitahi

(t) **Hohwe Farm –**

Eudiah Wandia Gitahi and Catherine Wangui Wachira

to share equally.

(u) **Wanyoro (Share) –**

Eudiah Wandia Gitahi and Catherine Wangui Wachira

(jointly)

(v) **Accounts – Shelmith Wanja Gachonde**

I have now carefully considered the application for confirmation of grant, the Protest, the rival affidavits, the written submissions as well as the law. It is common ground that the application for confirmation of grant as filed did not include all the properties of the deceased. It is also common ground that the affidavit of protest filed by the Protester brought forth the entire estate of the deceased. At least in her supplementary affidavit, **Rosebell** agrees that much. It is also common ground that all the beneficiaries save for **Vincent** are agreed on the mode of distribution suggested by **Rosebell** in her supplementary affidavit. If the contrary was the case I am sure that the other beneficiaries would have been able to say so by filing affidavits contesting the said distribution. That they did not do so can only mean that **Rosebell** is telling the truth when she depones that all the beneficiaries, apart from the Protester (**Vincent**) have agreed that the estate of the deceased be shared equally among all the beneficiaries. I will accept that to be the case in the absence of the evidence to the contrary.

It would appear that **Vincent's** opposition to the mode of distribution proposed by **Rosebell** is informed by the alleged deceased's wishes in his lifetime which he left behind in writing. However the alleged document has not been exhibited anywhere in the affidavit of **Vincent**. If such writings existed as **Vincent** would wish this court to believe, I cannot see how it would have escaped his attention such that he failed to tender it as part of his evidence. Unlike **Rosebell**, **Vincent** was represented in the proceedings by an able counsel. Had he been acting in person, I may have been tempted to excuse him and assume that he perhaps inadvertently left out the document while preparing and filing the affidavit of protest. As it is **Vincent** was represented by a lawyer who no doubt appreciated the importance of such a

document in support of **Vincent's** case if it ever existed. Further, even after filing the affidavit of protest, **Vincent** just like **Rosebell** had an opportunity to file further affidavits to bring to the fore the said document if indeed it existed. Failure by **Vincent** to produce the document allegedly left behind by the deceased as aforesaid can only mean one thing, there was no such document and I so hold.

A casual glance through the scheme of distribution proposed by **Vincent** leaves me in no doubt that it is skewed unfairly in his favour. There is no factual or legal basis for **Vincent** to end up getting almost half of the estate of the deceased. It cannot be because he is the only man among the rest of the beneficiaries. As correctly stated by **Rosebell** no beneficiary should get preferential treatment as against the rest of the beneficiaries as Vincent has attempted to do in his proposed scheme of distribution.

Since all the beneficiaries save for **Vincent** have agreed on the mode of distribution proposed by **Rosebell** in her supplementary affidavit and since there is no legal or factual basis for **Vincent's** objection to the scheme of distribution proposed by **Rosebell** I am inclined to agree and approve **Rosebell's** proposed scheme of distribution. Accordingly, the scheme of distribution proposed by **Vincent** in his protest is rejected. The grant shall thus be confirmed in accordance with paragraph 6 of the supplementary affidavit sworn by **Rosebell** on 4th September 2009 and filed in court on 10th September 2009. As the dispute involves members of the same family, I shall make no order as to costs.

Dated and delivered at Nyeri this 22nd day of October 2009

M. S. A. MAKHANDIA

JUDGE