

REPUBLIC OF KENYA

IN THE MATTER OF THE ESTATE OF GIDRAFF GATHURA GATHIGI - DECEASED

EUNICE NJERI GATHURAPETITIONER/DECEASED

Versus

MARGARET WANGECHI GATHURA OBJECTOR

JUDGMENT

Eunice Njeri Gathura now deceased petitioned for grant of probate of written will of Jidraff Gathura Githigi deceased. The court record shows that Margaret Wangechi Gathura cross-petitioned but there is no record that her cross petition was heard. Eunice was issued with a grant on 3rd February 2000. She died on 20th May 2006. Margaret has now filed summons dated 5th June 2007 which is the subject of this judgment. By that summons she seeks that the grant issued to Eunice be revoked because it had become useless and inoperative following her death. She deponed in her affidavit that it had been more than a year since the death of Eunice and as a consequence the grant is now useless. Margaret described herself as the widow of the deceased and therefore was of the view that she is the appropriate person to be appointed as administratrix. The application was opposed by James Gichuki Gathura. In the replying affidavit he stated that the deceased left a written will and that according to clause No. 2 of that will it was provided that on the death of Eunice who was the named executor of the will the executor was to be appointed by the descendants of Eunice. The respondent stated that the said descendants had appointed him to be the executor. When the matter came before court it was ordered to be heard by way of affidavit evidence. The applicants counsel argued that James Gichuki was not a party in this action. That argument however is a non starter because he had stated in which capacity he appears in this matter. He is after all a beneficiary of the deceased estate and he is therefore entitled to participate in the matter. It is clear that Eunice petitioned for grant of probate of written will. In the present application by Margaret the validity of that will is not questioned at all. Accordingly the court in reaching a decision to whom the grant should be issued will be guided by that will. The deceased in his will provided if Eunice died her descendant would appoint the next executor. James Gichuhi has been appointed by the descendants of Eunice. That being so the judgment of this court is:-

- 1. That the grant herein dated 3rd February 2000 issued to Eunice Njeri Gathura is hereby revoked.***
- 2. The court orders that a Grant of Probate of Written Will be issued to James Gichuki Gathura.***
- 3. There shall be no orders as to costs in respect of summons dated 5th June 2007.***

Dated and delivered this 27th day of January 2009.

MARY KASANGO

JUDGE