



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 1416 of 2005
IN THE MATTER OF THE ESTATE OF KINGSLEY
OBADIA GACHAMBA (DECEASED)
AND
IN THE MATTER OF AN APPLICATION BY INTERESTED PARTIES HILDA WANJIKU
AND NEHEMY WILLIE GACHAMBA

RULING

By summons dated 09.06.06 and filed on 12.06.06 stated to be brought under section 76 of the Law of Succession Act, Cap.160 and rule 44 of the Probate and Administration Rules, HILDA WANJIKU and NEHEMY WILLIE GACHAMBA applied for the following orders, namely:-

THAT this honourable court be pleased to revoke the grant of probate of Written Will issued to JACINTA NYAMBURA GACHAMBA to the estate of the above named KINGSLEY OBADIA GACHAMBA.

The grounds upon which the application is based are:-

- a) That the applicants herein are the wife and son of the deceased, respectively.
- b) That they are entitled together with the following children of the deceased to benefit from the estate of the deceased, namely:-
 - i Purity Wambui Gachamba -daughter to the deceased.
 - ii Victor Maina Gachamba -son to the deceased.
 - iii Joyce Wangui Gachamba - daughter to the deceased.
- c) That the grant was obtained fraudulently by making of a false statement and by concealment from the honourable court of material facts.
- d) That it was not disclosed that the interested parties/applicants and the above named persons are wife and children of the deceased and more so his dependants.
- e) That the grant was obtained by means of an untrue allegation of fact.

- f) That the grant has become useless, inoperative through subsequent circumstances.
- g) That it is only in the interests of equity and justice that the orders sought herein be granted.

The application is supported by the affidavit of Hilda Wanjiku (1st applicant) sworn on 09.06.06 plus her further affidavit sworn on 22.06.06.

The applicants were represented at the hearing of this application by learned counsel, Miss P.N. Njuguna.

Applicants' counsel acknowledged that the administrator, JACINTA NYAMBURA GACHAMBA was not served with the summons for revocation of the grant to her. The said counsel stated that this was because the administrator died before she could be served and also because there was no substitution for her.

Applicant Hilda Wanjiku's affidavit deposes that the grant of probate to the administrator Jacinta Nyambura Gachamba was based on the deceased's Written Will. I note that there is such a Will in the court file dated 04.11.94. Paragraph 4 of the Will provides as under –

'4. I give and bequeathe the following specific bequests:-

(a) To my wife Jacinta Nyambura Gachamba my land parcel nos. Loc. 7/Gakoigo/1703, Mwerua/Kithumbu/375, AND all my personal and moveable property.

(b) Should my wife pre-decease me or become deceased proximately simultaneously with myself then the above named bequests to go to my children with the above named with my wife then living and who shall attain the age of eighteen (18) years.'

I note, firstly, that the deceased did not mention any child of his by name in the Will. Secondly, that only the administrator, Jacinta Nyambura Gachamba is specified as deceased's wife in the Written Will witnessed by D.M. Muraguri Advocate on 04.11.94. Yet the 1st applicant, Hilda Wanjiku deposes in her affidavit sworn on 09.06.06 that she met the deceased in 1971 and settled with him as husband and wife; that her relationship to him was formalized in accordance with Kikuyu customs but she does not state when formalisation took place or what form it took; and that she got 5 children with the deceased, the first of which children, Nehemy Willie Gachamba is said to have been born in 1972 while the last child, Edwin Haraki Gachamba who was born in 1987 died in an unspecified year. In another part of the same affidavit, the said applicant Hilda Wanjiku acknowledges that the deceased died on 15.10.96 and that she was not living with him at the time but she does not disclose the circumstances under which she parted ways with him. Why?

One of the applicants' complaints is that the administrator did not in her petition for the questioned grant disclose their existence or that they were the deceased's dependants. In this connection, I note that the administrator named one JUDY WAITHIRA GACHAMBA as the other dependant apart from herself. According to the 1st applicant's/Hilda Wanjiku's affidavit sworn on 09.06.06, however, Judith Waithira Gachamba is neither the child of the deceased nor was he maintaining her prior to his death.

I also note that although according to paragraph 12 of 1st applicant Hilda Wanjiku's affidavit sworn on 09.06.06 she and the deceased got 5 children during the subsistence of their marriage, namely:-

- (i) Nehemy Willie Gachamba – son, born in 1972;
- (ii) Purity Wambui Gachamba – daughter, born in 1975;
- (iii) Victor Maina Gachamba – son, born in 1979;

- (iv) Joyce Wangui Gachamba – daughter, born in 1985; and
- (v) Edwin Haraki Gichamba – son, born in 1987 (deceased),

the applicants only name in the summons the children at (ii), (iii) and (iv) above as the only ones entitled to benefit from the deceased's estate. Why?

At paragraph 7 of the 1st applicant Hilda Wanjiku's affidavit sworn on 09.06.06 she deposes that the grant to administrator Jacinta Nyambura Gachamba has become useless and inoperative since the said executrix is now deceased. And vide paragraph 4 of Hilda Wanjiku's further affidavit sworn on 22.06.06, she discloses that Jacinta died on 93.06.06. And the summons now under consideration for revocation or annulment of the grant to Jacinta was filed on 12.06.06, i.e. slightly a week after Jacinta's death. The summons and its supporting affidavits allege various wrongdoings on the part of the late Jacinta Nyambura Gachamba in the manner she obtained the grant, issued to her on 08.09.05. Why did the applicants wait for about 9 months until Jacinta died before filing the summons for revocation of the grant to her?

It should now be clear from the intermitent questions I have raised in the course of analyzing salient facts of the applicants' summons for revocation that I am not minded to grant the orders sought without hearing representations from a representative of the late administrator, Jacinta Nyambura Gachamba. The only person who seems to approximate to such a representative appears to be JUDITH WAITHIRA GACHAMBA named as the other dependant in the late Jacinta Nyambura Gachamba's affidavit sworn on 19.07.02 in support of her petition. Accordingly, determination of the applicants' summons dated 09.06.06 for revocation or annulment of the grant to Jacinta Nyambura Gachamba is deferred pending hearing representations thereon from JUDITH WAITHIRA GACHAMBA. The applicants must, therefore, serve their summons plus its supporting documents upon the said JUDITH WAITHIRA GACHAMBA.

Orders accordingly.

Delivered at Nairobi this 4th of April, 2007.

B.P. KUBO

JUDGE