



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 83 of 2006

IN THE MATTER OF THE ESTATE OF CHARLES KARIUKI GACHERU (DECEASED)

STEPHEN NJOROGE KARIUKI & OTHERS.....PETITIONER/APPLICANT

VERSUS

ELIZABETH MURUGI KARIUKI..... 1ST RESPONDENT

JAMES GICHUHI KARIUKI.....2ND RESPONDENT

RULING

The proceedings herein were at first initiated by summons dated 15.06.06 filed the same day by the petitioner/applicant and were stated to be brought under section 82 (a) of the Law of Succession Act, Cap.160. The summons applied for restraining orders against the respondents, their agents, etc. from partitioning, entering, trespassing on and interfering with the petitioner's quiet enjoyment of a portion of land said to have been of the deceased herein. The petitioner/applicant filed the summons as holder of a grant of letters of administration issued to him on 28.04.06.

Initially, Elizabeth Murugi Kariuki filed two replying affidavits stated to have been sworn on 29.08.06 on her own behalf and on the authority of James Gichuhi Kariuki also as a dependant of the deceased in opposition to the petitioner's/applicant's summons dated 15.06.06.

Subsequently, however, the 1st respondent, Elizabeth Murugi Kariuki filed a summons dated 29.08.06 on her own behalf and on behalf of the 2nd respondent, James Gichuhi Kariuki and one Mary Ruguru Kariuki for revocation or annulment of the grant issued to the petitioner/applicant, Stephen Njoroje Kariuki on 28.04.06. That summons was stated to be brought under sections 76 and 47 of the Law of Succession Act aforesaid and applied for the following orders, namely, that:

1. The grant of letters of administration intestate for the estate of CHARLES KARIUKI GACHERU (deceased) made to STEPHEN NJOROGE KARIUKI on 28.04.06 be revoked/annulled.
2. The grant of letters of administration intestate for the estate of CHARLES KARIUKI GACHERU (deceased) be made to the applicant, ELIZABETH MURUGI KARIUKI and other dependants as the court may deem fit.

The grounds upon which the application is based are that:-

- i. The applicant ELIZABETH MURUGI KARIUKI is a beneficiary of the estate of the deceased.
- ii. The grant of letters of administration herein was obtained fraudulently by making of a false statement and by concealment from the court of the fact that the deceased was married to the applicant.
- iii. The grant was obtained without the knowledge of the applicant and without her consent.
- iv. The petitioner is not a fit and proper person to be issued with the letters of administration intestate.

The summons for revocation of grant is supported by the 1st respondent's/objector's affidavit sworn on 29.08.06.

At the hearing of the summons for revocation dated 29.08.06, the objector/applicant, Elizabeth Murugi Kariuki acted in person as did also the 2nd respondent. One Mary Ruguru Kariuki who described herself also as a respondent likewise acted for herself. The petitioner/applicant, Stephen Njoroge Kariuki also acted in person. The 2nd respondent, James Gichuhi Kariuki and Mary Ruguru Kariuki described themselves as respondents with reference to the summons dated 15.06.06 but they are in fact co-objectors/applicants along with objector/applicant Elizabeth Murugi Kariuki in the summons for revocation dated 29.08.06.

The summons for revocation is supported by the affidavit of objector/applicant Elizabeth Murugi Kariuki stated to have been sworn by her on 29.08.06 on her own behalf and that she was authorized to do so by James Gichuhi Kariuki and Mary Ruguru Kariuki, all described as dependants of the deceased. At paragraphs 5 – 13 of Elizabeth Murugi Kariuki's aforesaid affidavit, she stated as follows:-

'5. That on or about the 1st day of December, 2005 I was served with Citations to accept or refuse Letters of Administration Intestate being granted to the Petitioner. That my co-objectors herein were similarly served with the said Citations. (Annexed hereto and marked "EMK I" are copies of the Citations served).

6. That the said Citations were filed in HCC P & A 3325 of 2005.

7. That I together with my co-objectors entered an appearance in the aforesaid cause on 14th December, 2005 and served the same upon the petitioner. (Annexed hereto and marked "EMK 2" are copies of the appearances).

8. That from that date we did not hear anything from the petitioner and we have all along been waiting to be summoned in court either by the petitioner or by the court itself.

9. That on or about the 3rd July, 2006 I was surprised to be served with an application under Certificate of Urgency praying among other things that I together with my co-objectors be restrained from interfering with the estate of the deceased. (Annexed hereto and marked "EMK 3" is a copy of the application).

10. That I and my co-objectors promptly perused the court file and noted the following:-

(i) That the grant was applied for in HCC P & A 83 of 2006 whereas the Citations served were in HCC P & A 3325 of 2005 where we had even entered appearance.

(ii) The Petitioner did not inform the objectors when he was petitioning for Letters of Administration.

(iii) No consent was sought or obtained by the Petitioner before Grant of Letters of Administration.

(iv) All the assets of the deceased were not included in the Petition.

11. The deceased had the following properties which have not been included in the list of assets of the deceased:-

(i) Muguga/Gitaru/1832

(ii) Muguga/Gitaru/1835

(iii) Ngure Mwireri Group Shares

12. That it is my prayer that the Letters of Administration Intestate to the Petitioner be revoked and we be allowed as a family to apply for fresh Letters Administration taking into account all the beneficiaries.

13. That after the demise of the deceased the Petitioner led other dependants of the deceased, participated in demolishing a dwelling house which had been left to me by the deceased and in which my son was living. They were in fact charged and convicted of the offence. The Petitioner is not a fit and proper person in the circumstances to be given the onerous task of administration of the deceased's estate. (Annexed hereto and marked "EMK 4" is a copy of judgment delivered by the Principal Magistrate's Court Kikuyu).'

The position taken by the petitioner/applicant Stephen Njoroge Kariuki in this matter is basically that he obtained the grant issued on 28.04.06 procedurally.

I have given due consideration to the affidavit evidence on record as urged by the parties, who acted in person.

I accept the affidavit evidence filed by objector/applicant Elizabeth Murugi Kariuki that she and her co-objectors James Gichuhi Kariuki and Mary Ruguru Kariuki were served by the petitioner/applicant Stephen Njoroge Kariuki with Citations under High Court Succession Cause No.3325 of 2005 regarding the estate of the deceased CHARLES KARIUKI GACHERU who is the same deceased as in the present High Court Succession Cause No.83 of 2006. I accept that objector/applicant Elizabeth Murugi Kariuki and her co-objectors James Gichuhi Kariuki and Mary Ruguru Kariuki, also known as Mary Ruguru Njogu, entered appearance under High Court Succession Cause No.3325 of 2005 but heard no more from the petitioner/applicant Stephen Njoroge Kariuki about that Succession cause. I accept objector/applicant Elizabeth Murugi Kariuki's affidavit evidence to the effect that petitioner/applicant Stephen Njoroge Kariuki quietly went behind the backs of Elizabeth Murugi Kariuki, James Gichuhi Kariuki and Mary Ruguru Kariuki and petitioned for letters of administration of the estate of CHARLES KARIUKI GACHERU (Deceased) under the present High Court Succession Cause No.83 of 2006 without consulting the aforesaid objectors. That is fraud of a very high order on the part of the said petitioner/applicant Stephen Njoroge Kariuki and the grant issued solely to him on 28.04.06 under the present High Court Succession Cause No.83 of 2006 cannot be allowed to stand. I note from the affidavit of petitioner/applicant Stephen Njoroge Kariuki filed on 16.01.06 in support of his petition for letters of administration under the present High Court Succession Cause No. 83 of 2006 that he recognized JAMES GICHUHI KARIUKI and ELIZABETH MURUGI KARIUKI as also being among those who survived the deceased herein. It may be prudent to have them as the next set of administrators in the hope that they will cater for the wishes of all beneficiaries of the deceased's estate and avoid future wrangles over the deceased's estate. Accordingly, I make the following orders:-

a) Prayer 1 in the summons for revocation dated 29.08.06 is granted and the grant of letters of administration intestate of the estate of CHARLES KARIUKI GACHERU (Deceased) made to STEPHEN NJOROGE KARIUKI on 28.04.06 is hereby revoked.

b) In place of the grant revoked under (a) above, a new grant is hereby issued to JAMES GICHUHI KARIUKI and ELIZABETH MURUGI KARIUKI.

c) Costs shall be in the cause.

Orders accordingly.

Delivered at Nairobi this 21st day of November, 2007.

B.P. KUBO

JUDGE