



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Succession Cause 2113 of 1997**

**IN THE MATTER OF THE ESTATE OF HENRY GACHUNGI –(DECEASED)**

**RULING**

I have before me an application dated 18<sup>th</sup> February, 2005 by way of summons filed by the Applicant Solomon Gituku Gachungi in person.

It seeks three prayers namely:

- 1. Consolidation of this cause with H.C. P&A. NO.1928/00**
- 2. Review of the order dated 16<sup>th</sup> March, 2000 in particular order No.2.**
- 3. Rectification of certificate of confirmation of grant dated 5<sup>th</sup> June, 1998 to exclude L.R.NO. Githunguri/Kiairia/T.293, L.R. No. Githunguri/Githunguri/ Kiairia/T.294.**

The application is supported on the grounds set forth on the face of the application and on supporting affidavit sworn by the Applicant on 18<sup>th</sup> February, 2005.

According to his affidavit he seeks to revoke a certificate of confirmation of grant of the probate of the will issued on 5<sup>th</sup> June, 1998.

The reason for such revocation is that the property bequeathed to him did not form part of the estate of the deceased. He also mentions two assets in paragraph 16 of his affidavit which are not accounted for.

The application is opposed on grounds of opposition dated 11<sup>th</sup> May, 2005 and on the replying affidavit of Samuel Mwaura Gachungi sworn on the same date.

The application was also opposed on the ground that the applicant filed an application to revoke the certificate of confirmation of 15<sup>th</sup> June, 1998 but the same was dismissed on 30<sup>th</sup> June, 1999. Thereafter the Applicant filed notice of appeal on 1<sup>st</sup> July, 1999. Instead of pursuing the appeal, he once again filed an application for review which was dated 5<sup>th</sup> October, 1999. The same was again dismissed on 16<sup>th</sup> March, 2000.

With the background of these applications before the court in this cause, the application for review of an order dated 16<sup>th</sup> March, 2000 after the lapse of almost five years cannot be allowed. Thus I reject prayer No.2 of the application.

The other two prayers relate to the cause which was filed after the determination of this cause specially, after the confirmation of grant in this matter on 5<sup>th</sup> June, 1998.

In any event, it is contended by the Applicant that the certificate of confirmation dated 6<sup>th</sup> November, 2001 was not objected to. With these contentions I had to call for the court records of the H.C. Succession cause No.1928/00. In the said cause the grant is given to the Applicant herein and mentions only two properties which are L.R.No.Githunguri/Kiairia/T.294 (0.25 acres) L.R. Githunguri/Githunguri/Kiairia/T.293 (0.25 acres) which properties have been, in the present cause, bequeathed to one Mungau wa Gachungi as per the Will.

However, I do note, however, that the ruling of Etyang J. on 16<sup>th</sup> March, 2000, which is sought to be reviewed by the applicant only as regards the order of the costs to be paid by him, dealt with all the issues before me, namely, the ownership of the two properties now sought to be challenged by the Applicant.

I also note that the Applicant has not stated how he, being the Administrator in the estate of his mother Rahab Nyanjau Gachungi placed these two properties as the assets of her estate. I state so, because since the year 1999, he had made several efforts to remove those properties from the confirmed grant made in this cause.

Once again, I do note that in the ruling of 16<sup>th</sup> March, 2000 Etyang J. has specifically stated that the two plots in issue before me, reverted to the deceased herein after the aforesaid Rahab Nyanjau Gachungi the second wife of the deceased predeceased him and died on 16<sup>th</sup> January, 1984.

The Applicant herein, after having been unsuccessful in his efforts to get those properties filed the petition for Letters of Administration for her estate on 11<sup>th</sup> September, 2000 which is P. & A.1928/000 after 16 years from the death of his mother. The Respondents herein were not cited by him and the Applicant knew very well that the properties mentioned were already bequeathed by the deceased in the earlier cause and which the Applicant himself contested tooth and nail.

This seems to be a clear case of concealment of material fact and fraud on the part of the Applicant. This is more so when I do note that the present cause is that of a testate cause and I also see that all the applications made by the Applicant were made after the confirmation of the grant. I thus on my own motion allow the consolidation of the two cases that is to say, the present cause with P. & A.1928/00 and revoke the certificate of confirmation and grant of representation made to the applicant in the P. & A. Cause No.1928/00, under the provisions of Section 76 of the Laws of Succession Act (Cap 160 Laws of Kenya).

The Applicant shall pay the costs of this application which is dismissed.

Dated and signed at Nairobi, this 26<sup>th</sup> day of June, 2006.

**K.H. RAWAL,**

**JUDGE**

**26.6.06**