



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

**Succession Cause 1207 of 2000**

**IN THE MATTER OF THE ESTATE OF FRANCIS SOLOMON KIAMA GATHERU –  
(DECEASED)**

**JUDGMENT**

After the grant of letters of representation in respect of estate of the deceased herein was issued on 23<sup>rd</sup> May, 2001 to Mary Wangeci Kiama and Irene Wangui Kiama (widow and daughter of the deceased), the six applicants herein filed summons for revocation dated 28<sup>th</sup> February, 2005 filed on 10<sup>th</sup> March, 2005.

John Weru Gatheru the third Applicant filed two affidavits in support of the said summons sworn on 28<sup>th</sup> February, 2005 and 13<sup>th</sup> May, 2005 respectively. He averred that he had authority of all other applicants to swear those affidavits.

The summons is opposed and the Respondents/Administrators take support on the contents of affidavit sworn by the widow on 18<sup>th</sup> April, 2005.

There does not seem to be any dispute that the applicants are brothers and sisters of the deceased and the only dispute is as regards the property known as Island Settlement Scheme Plot Number 59. It is also not in dispute that the aforesaid plot was initially allocated to the father of the deceased, James Gatheru Githirwa.

I also wish to stress that the father of the applicants and the deceased died on 14<sup>th</sup> May, 1979 and the deceased herein only filed the earlier petition for grant of representation in respect of only the plot in dispute and not on any other plots which are, in the name of the father of the deceased and the objector, as per the further supporting affidavit of the 3<sup>rd</sup> Applicant sworn on 13<sup>th</sup> May, 2001 (paragraphs 8 and 10). At this juncture I also note that the document relating to property referred to in paragraph 9 of the said affidavit owned by John Weru, the third applicant, are having alterations which are not explained.

Lastly, I also note that the third applicant has averred many facts which are not within his own knowledge but has failed to refer to the source and grounds of his knowledge (see order XVIII Rule 3(1) of Civil Procedure Rules). Only averment that he has authority to file his affidavit on behalf of others does not entitle him to throw the legal requirements out of the window.

Now coming to the facts and submissions made on the issue, i.e., whether the certificate of confirmation granted in Nairobi Succession Cause No.607 of 1986 issued to the deceased herein was illegal and if so, whether because of that the certificate of confirmation issued herein is null and void.

I say so because the only prayer made herein is the revocation of the confirmation of grant issued herein.

As earlier stated, despite the fact brought forth by the applicants that there are properties which are still in the name of the deceased, after about 26 years no petition for grant of representation as regards those properties has been filed. This fact itself gives accreditation to the averments made by the Respondents/Administrators to the effect that the deceased had distributed his properties during his life time and the families of his sons are settled in their respective lands. I also get support from the fact that the third applicant mentioned about the property in dispute only and did not state those properties which according to him are still in the name of their deceased father.

Moreover, the Respondents have sufficiently proved that the deceased father defaulted in payments of monthly instalments of the property in dispute and would have lost his entitlement thereon if the deceased had not undertaken to pay the instalments. I have no evidence as to whether the deceased's father paid, if at all, any instalments towards the land allocated to him initially.

I also note that the report of death to Public Trustee received on 19<sup>th</sup> September, 1984, does not help the Applicants as it does not show that all the beneficiaries knew and/or consented to such report. It does not mention also any alleged oral will so as not to file any petition for the estate. On the contrary, if the purpose of such report was to ensure safety of their father's estate, the best way was to have filed the petition for letters of representation seeking life interest to the mother which is envisaged also as per the law. I also cannot understand the delay of almost five years in filing that report to the Public Trustee.

With the aforesaid facts before the court I am unable to find any fraud or any concealment of material facts in filing this petition either at the stage of applying for letters of representation or at the stage of application of confirmation of grant. I also find similarly in respect of the certificate of grant in Succession Cause No.607/1986 looking to the circumstances of the case and do not find any reason to interfere only because of the averment by the deceased as being the sole heir to the property in dispute.

I thus dismiss with costs the summons for revocation dated 28<sup>th</sup> February, 2005.

Dated and signed at Nairobi, this 19<sup>th</sup> day of July, 2006.

**K.H. RAWAL**

**JUDGE**

**19.7.06**