



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE 1463 OF 1991**

**IN THE MATTER OF THE ESTATE OF GITAU CHEGE KIBERA (DECEASED)**

**R U L I N G**

A Grant of Letters of Administration intestate, to the estate of the late Gitau Chege Kibera, (deceased) was issued to Kibera Gitau and Wambui Gitau on 28th October, 1992, and subsequently confirmed on 14th May, 1993. The confirmed grant was amended on 8th October, 1993. The deceased's eldest son Bedan Mbugua Gitau filed summons for Revocation or Annulment of the said Grant. This was dated 6th December, 1995. It was supported by an affidavit of even date. Annexed to the affidavit were several documents including a Translation of "APPORTIONMENT OF PROPERTIES BY GITAU WA CHEGE AMONGST HIS CHILDREN, DATED 27.8.78 at 4.00 p.m.". The document was indicated as signed by 3 sons including the objector. The reason given for the filing of summons for Revocation was that "the grant was obtained fraudulently by concealing material facts from the court relating to the estate".

Paragraph 9 of the objector's affidavit reads, "That prior to the death of my father DAGORETTI/KAWANGWARE/T.57 had been given to me by my deceased father in the presence of Kibera Gitau and other beneficiaries after I salvaged the said plot from being auctioned due to a judgement against our deceased father (annexed herewith is a bundle of agreed consent by family members and documents confirming the intended auction marked BMG11". In reply to the summons for Revocation Kibera Gitau, a co-administrator to the estate of the deceased filed a replying affidavit. He denied the averments in the affidavit of the objector. His affidavit is dated 19th February, 1996, and concludes thus in para 20, "that notwithstanding everything, the administrators gave him (the objector) his rightful share and he kept quiet for 3 years only to erupt now when some of the property is already transferred to the beneficiaries".

In court during the hearing of summons for Revocation, Mr. Kabaka advocate for the objector/applicant, submitted that the Grant was obtained without the knowledge of the objector, who is a son of the deceased by his first wife. He submitted further that the property No. DAGORETTI/KAWANGWARE/T.57, was given to him by the deceased, after he (the objector) had salvaged it from being auctioned. The objector complained further that he did not get 4½ acres as was promised. That instead he only got 3½ acres yet he had paid money to his father, the deceased. Mr. Sane, advocate for the petitioners submitted that the deceased died intestate, having not made a will. He submitted further that the objector was cited as he is the eldest son of the deceased's first wife. That he declined to petition for the grant so the 2 petitioners, one of whom is the objector's brother and stepmother petitioned for the grant instead. Mr. Sane submitted that the objector was compensated in full for any monies he paid for or on behalf of the deceased, so he is not entitled to claim land on that account. He also challenged the documents annexed to the objector's affidavit. He said that the translation was not authentic as there was no certificate of translation.

Having considered the submissions of both learned and the averments in the affidavits of the petitioners and the objector, I decided to go through the court record. I found two court files, bearing the same numbers i.e. P&A Cause No.1463/91, but this could have been due to the fact that the file was at some file mislaid and or misplaced. The 1st court file in which proceedings were commenced show that the objector was cited, vide "a citation to accept or refuse letters of administration intestate", dated 20th December, 1991. The citation commanded Bedan Mbugua Gitau to "cause an appearance to be filed within 15 days of service of citation.....". In the same court file is a Return of Service showing that the citation was served on the objector on 16th January, 1992, and on 30th January, 1992 the objector

entered appearance to citation. This I find was done within the time prescribed by law. Thereafter he had 30 days to petition for letters of administration, but the record shows that on 19th March, 1992, Bedan Mbugua filed a replying affidavit to the citation served on him. He disclosed that the deceased's estate was subject to a written will.

He also averred in this affidavit that he had bought one of the pieces of land whose number was wrongly given as DAGORETTI/KAWANGWARE/T.57. In paragraph 9 of the same affidavit he concluded, "that the Letters of Administration should therefore be issued to the citors jointly with myself to facilitate a just and fair administration of estate in the interest of all concerned". This affidavit was dated 4th March, 1992. It was filed by Bedan personally. I have, however, not found in the court file a petition of Letters of Administration, either intestate or with a written will, filed by the objector in compliance with the Rules of Citation. As the petitioners have stated when the objector failed to petition for Letters of Administration, they did so vide a Petition for Letters of Administration intestate, filed in court on 13th August, 1992. It was accompanied by an affidavit sworn by Wambui Gitau Chege, the second wife of Gitau Chege, deceased. A list of survivors was given in the affidavit. The list included the name of the objector, Bedan Mbugua Gitau.

The records in the 2nd file (presumably the re-constructed file) shows that the temporary "Grant of Letters of Administration, intestate, was issued to the petitioners on 28th October, 1992. The said Grant was eventually confirmed, vide a Certificate of Confirmation of a Grant dated 14th day of May, 1993. The schedule of distribution of property shows that the objector, Bedan Mbugua Gitau was given 3½ acres out of land parcel No. L.R. NO. NGONG/KIBIKO "A"/1106 MEASURING 17 ACRES. The objector contests this mode of distribution. The piece of land quoted by the objector as Plot No. DAGORETTI/KAWANGWARE/T.57, was awarded to Kibera Gitau, one of the administrators of the deceased's estate. This is also contested by the objector. So from the evidence on record, I find that the 2 administrators quite rightly petitioned for the Grant to the estate of the late Gitau Chege Kibera, when the objector who was cited did not do so.

Secondly and most important what I have not found in the 2 court files is a consent by the beneficiaries to the mode of distribution of the deceased's estate. This must be the reason why the objector says that the schedule of distribution attached to the Certificate of Confirmation, "concealed material facts". I find that failure by the administrators to get consent of all the beneficiaries including the objector to the mode of distribution of the deceased's estate, was fatal to the administration of the estate, and for that reason, I proceed to REVOKE the Grant issued to the 2 administrators Kibera Gitau and Wambui Gitau. On 28th October, 1992 and later confirmed, vide the Certificate of Confirmation dated 14th May, 1993. As the alleged concealment of facts seems to concern only the distribution of the estate and not the administrators, I direct that the same two administrators Kibera Gitau and Wambui Gitau, be issued with a fresh Grant of Letters of Administration intestate to the estate of the deceased Gitau Chege Kibera.

Once the new Grant is issued, and before the same is confirmed the family of the deceased Gitau Chege Kibera should meet discuss and agree on the mode of distribution of the deceased's estate. If the distribution is agreed, the 2 administrators should move the court for confirmation of that Grant by completing form 108 the summons for confirmation of Grant and Form 9 the supporting affidavit. All the beneficiary should then complete form 37, consent to confirmation, if they do in fact consent to the mode of distribution on form 9. I believe that this should resolve the dispute. If, however, the mode of distribution is not agreed, then the parties to this dispute might consider adducing evidence to resolve the issue. These are the orders of the court.

**Dated at Nairobi this 19th day of September, 2002.**

**JOYCE ALUOCH**

**HIGH COURT JUDGE**