



**In re Estate of Wamutitu Gichuki(Deceased) (Succession Cause
76 of 1995) [2024] KEHC 12806 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 76 OF 1995
DKN MAGARE, J
OCTOBER 17, 2024**

IN THE MATTER OF THE ESTATE OF WAMUTITU GICHUKI (DECEASED)

BETWEEN

JAMES GICHOHI WAMUTITU APPLICANT

AND

GEOFFREY GICHUKI WAMUTITU RESPONDENT

RULING

1. This file is stranger than fiction. Everybody wishes to put to a close a bad thing. However in this matter, the same keeps being resurrected.
2. The estate of Wamutitu Gichuki remained unconcluded since 18/4/1995, some 29 years 6 months later. When the cause was filed, Land Parcel No. Aguthi/Gaki/65 undeveloped was declared as the only asset. 8 sons ranging from 62 years to 30 years were declared. It is unknown whether the deceased had daughters. There was annexed to it an oral will, on sharing.
3. An objection was filed on 7/9/1995. There was an objection made on 7/9/1995 by John Maina Wamutitu. This was based on the ground that the Petitioner has his own land Plot Aguthi/Gaki/1464 measuring 5.95 Hectares (15 acres).
4. The petition started as a citation by Moses W. Wamutitu to Nyagathaithi Wamutitu to take or refuse letters, otherwise Moses Waikwa Wamutitu could take. The land Aguthi/Gaki/464 was registered in the name of Waikwa s/o Wamutitu.
5. The petition for letters of administration by way of cross-petition was filed on 16/10/1995 by John Maina Wamutitu. It was based on grounds that the purported oral will was executed on 9/7/1988 when the deceased died. The deceased was indicated to have died on 9/7/1988. A form had been filed indicating that the deceased left the following:-



- a. Njeri Wamutitu – 81
 - b. Wanjiru Wamutitu – 78
 - c. Nyamathiari Wamutitu – 75
 - d. Nyaruguru Wamutitu – 70
 - e. Njeri Wamutitu – 74
 - f. Wangoi Wamutitu – 68
6. Moses Waikwa Wamutitu died on 28/7/2016. He was succeeded vide Cause No. 70 of 2018 by Peterson Gathoni Waikwa and Simon Wachira Waikwa. The matter proceeded and submissions were filed on 27/3/2002 by the Objector and the Petitioner respectively. A judgment was delivered on 28/5/2002 by Justice GVO Juma (now retired). The court found that Plot No. Aguthi/Gaki/464 belongs to the deceased's estate but the court gave him an option. He is said to have carried out some developments on the mother's portion.
 7. The third house was to get 10 acres out of Aguthi/Gaki/464 though it was registered in the name of the Petitioner. The court directed that the Petitioner was to share 10 acres of Aguthi/Gaki/464 and get half of the plot he occupied in default he was to vacate the third house' portion and move to Aguthi/Gaki/464.
 8. The grant was confirmed on 2/7/2002 in terms of the judgment. The parties subsequently recorded a consent on 15/8/2002 to effect of the judgment of 28/5/2002. The Petitioner sought to have the order of 15/8/2002 be dealt with as ordered in the judgment herein.
 9. The Objector sought to enforce the alternative to the election, that is the petitioner, Moses waikwa Wamutitu to get 10 acres out of Aguthi/Gaki/650 and surrender half of Aguthi/Gaki/464 or in case of refusal, he vacates, the suit land Aguthi/Gaki/650.
 10. The Petitioner was indicated to have refused to make an election. However, the parties filed a consent letter dated 15/8/2008, parties sought to vary the orders of 25/7/2008 in the following terms:
 - a. The petitioner, Moses waikwa Wamutitu to get 10 acres out of Aguthi/Gaki/650 and surrender half of Aguthi/Gaki/464.
 - b. Costs to the petitioner.
 - c. Grant of letters of administration issued on 22/11/1996 be confirmed.
 11. The orders of 25/7/2008 were to the effect that: -
 - a. The petitioner, Moses waikwa Wamutitu to get 10 acres out of Aguthi/Gaki/650 and forfeit half of Aguthi/Gaki/464.
 - b. Costs should not be ordered as it is a family matter.
 - c. Grant of letters of administration issued on 22/11/1996 be confirmed.
 12. The change of the order was only in respect to costs.
 13. There has been subsequent deaths and requests for rectification. This has left the file in perpetuity with no conclusion and contrary to Section 83(g) and (i) of the [Law of Succession Act](#).



14. Subsequently summons for confirmation of grant were filed on 30/7/2015. The court issued a further amended certificate of confirmation of grant on 14/12/2015. Another application was filed on 22/8/2017 for enforcement over Aguthi/Gaki/464 and Aguthi/Gaki/650. This was further amended on 18/10/2018.
15. This matter did not end there. Geoffrey Gichuki Wamutitu filed an application dated 17/01/2022 for substitution of the deceased beneficiaries, Moses Waikwa Wamutitu and Annah Wangechi. Another application was filed on 20/4/2022. Another application for rectification was made on 7/3/2023.
16. Another application was filed on 2/8/2023 to revoke and set aside the grants and distribution be done afresh. This was done by James Gichohi Wamutitu. He says he was a beneficiary of the estate. This fact is not true. It states that the said person was to benefit 1.485 from Aguthi/Gaki/464. He states that he was disinherited. The current administrator opposed the said application through an affidavit dated 14/12/2023. He states that there is no strange land.
17. The Applicant has indeed executed transmission forms to get 1.485 hectares out of Aguthi/Gaki/464, the very land he is referring to as strange. This particular averment is not contested or indeed contestable. The Applicant reiterated his averments. He questioned the consent made on 10/7/2002 between the Petitioner and the Objector. The consent was said to be strange. They stated that the strange land is no longer available. This leaves him without inheritance. He prays that he considers himself aggrieved.

Analysis

18. What ails the matter is the very essence of the perpetuities and accumulative act parties have been succeeding various deceased persons in perpetuity. However, the parties have lost context for this matter. The Petitioner was given an election. He was to move to Aguthi/Gaki/464 or cede 10 acres thereon and get half of Aguthi/Gaki/464. He opted for the sharing. He was a registered proprietor of Aguthi/464.
19. However, he was holding the same gratuitously having had the same transferred on behalf of his late father while the father was in detention during the state of emergency. It was found by a court of coordinate jurisdiction that Aguthi/Gaki/464 was free property of the original deceased for whom the estate relates. The consent thus concluded the judgment. The Applicant cannot dispute the consent now having been accepted by the Petitioner as the registered owner.
20. There was no appeal preferred from the judgment. Removing the said parcel from the grant does not in any way take away the entitlements decreed in this matter. The same will be got out of succession related to the deceased Petitioner. It is a decree that has crystalized. Removal only deals with the fact that the Petitioner is now in estate.
21. The Applicant becomes a creditor to the estate, who shall get their share of 10 acres in priority to all and sundry. This order should thus be filed in the estate of late Moses Waikwa Wamutitu, the deceased Petitioner. The same should be carried out as hitherto agreed on the share of 10 acres. Other than the 10 acres, I note that the administrator has not administered the estate forever. Therefore he shall proceed with haste and conclude succession by 16/4/2025.

Determination

22. The orders thus commending themselves are:-
 - a. The application dated 2/8/2023 lacks merit and is accordingly dismissed.



- b. The persons entitled under the former amended grant to inherit 10 acres are entitled as a priority to have 10 acres carved out of Aguthi/Gaki/464 pursuant to the Judgment of this court.
- c. There shall be no substitution in the matter. All beneficiaries who shall have died or shall die will have their share registered in the names of their estates and succession carried out in those estates.
- d. The Applicants have a right over Aguthi/Gaki/464 a portion measuring 10 acres.
- e. Each party to bear its costs.
- f. The Administrator to conclude the administration by 16/4/2025.
- g. The file is closed.

DELIVERED, DATED and SIGNED at NYERI on this 17th day of October, 2024.

RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kebuka Wachira for the Respondent

No appearance for C.M. King'ori

Court Assistant – Jedidah

