



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 649 OF 2009**

**(CORAM: WAMAE T. CHERERE-J)**

**IN THE MATTER OF THE ESTATE OF RWANDA MWIRICHIA ALIAS M'RWANDA M'MWIRICHIA (DECEASED)**

**BETWEEN**

**SAMUEL MWIRICHIA RWANDA.....PETITIONER/RESPONDENT**

**AND**

**ALICE KARURU RWANDA**

**AGNES KANGAI**

**DORCAS NKIROTE**

**BONIFACE MURITHI M'RWANDA**

**NICHOLAS MUTUMA RWANDA**

**ESTHER MUTHANGA RWANDA .....APPLICANTS**

**AND**

**IN THE MATTER OF AN APPLICATION FOR PROVISION BY**

**LYDIA GACHERI ARACHI..... DEPENDANT/APPLICANT**

**ESTHER MUTHANGA RWANDA .....<sup>ND</sup> DEPENDANT/APPLICANT**

**RULING**

**Background**

**1. Rwanda Mwirichia Alias M'rwanda M'Mwirichia (Deceased) died sometimes on 12<sup>th</sup> April, 1985. He was survived by the following:**

**Widow**

**Hellen Ntibuka now deceased**

**Children**

- 1) Lydia Gacheri Arachi
- 2) Alice Karuru Rwanda

- 3) Agnes Kangai
- 4) Dorcas Nkirote
- 5) Grandchildren

2. Deceased's estate comprised of:

**1) NYAKI THUURA/1212**

**2) NYAKI THUURA/1514**

3. By a consent dated 25/6/2018 the parties agreed to share the estate as follows:

**NO. NYAKI/THUURA/1514**

- i. Boniface Muriithi- 1 acre
- ii. Nicholas Mutuma – 1 acre
- iii. Lydia Gacheri – 0.16 acre
- iv. Dorcas Nkirote – 0.16 acre
- v. Esther Muthaga – 0.16 acre

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- i. Samuel Mwachiri Rwanda- 1.3 acre
- ii. Alice Karuru Rwanda – 0.6 acre
- iii. Agnes Kangai Rwanda – 0.6 acre

4. A certificate of confirmation of grant was issued on 25<sup>th</sup> June, 2018 in terms of the consent order.

**Summons**

5. By summons dated 19<sup>th</sup> July, 2021, **Lydia Gacheri Arachi** and **Esther Muthanga Rwanda (1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively)** seek orders that the grant issued on 25<sup>th</sup> June, 2018 be set aside and reasonable provision be made to them.

6. The application is based on grounds on the face of the application and on the supporting affidavit and supplementary affidavit sworn by the Applicants on 19<sup>th</sup> July, 2021 and 09<sup>th</sup> November, 2021 respectively mainly that:

**i. Lydia Gacheri Arachi who is daughter of deceased got 0.16 acres whilst her sisters Alice Karuru Rwanda and Agnes Kangai Rwanda got 0.6 acre each**

**ii. Esther Muthaga Rwanda who is granddaughter of the deceased and who was raised by the deceased got 0.16 acres instead of 0.5 acres**

**iii. That Esther Muthaga Rwanda was tricked into signing the affidavit sworn on 26<sup>th</sup> February, 2018**

7. The application is also supported by **Samuel Mwirichia Rwanda (Petitioner/Administrator)** who is equally represented by Applicant's advocate who by his replying affidavit sworn on 19<sup>th</sup> July, 2021 controverts the Applicants' averments and avers that the consent dated 25<sup>th</sup> June, 2018 was recorded in court in the presence of all the parties and is binding on each of them.

8. On the other hand, the 1<sup>st</sup> to 6<sup>th</sup> Applicants by their replying affidavit sworn on 20<sup>th</sup> September, 2021 avers that:

**i. Lydia Gacheri Arachi got 0.16 acres because her son Samuel Mwirichia Rwanda was apportioned 1.3 acres**

**ii. Dorcas Nkirote got 0.16 acres because her sons Boniface Muriithi and Nicholas Mutuma were apportioned an acre each**

**iii. Alice Karuru Rwanda and Agnes Kangai who did not have sons got 0.60 acres each**

## Analysis and Determination

9. I have considered the summons in the light of the affidavits on record and submissions on behalf of the parties.

10. In the case of **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] eKLR Achode J** restated the provisions of Section 76 of the Law of Succession as follows:

**The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the application of an interested party or on the court's own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.**

11. A grant may also be revoked if the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. See - **Matheka & Anor v Matheka [2005] 1 KLR pg 456**. It may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.

12. I also wish to add that under the provisions of Section 47 of the Act, the grant may be revoked for any other reasonable cause. From the foregoing, I have deduced **the following issues for determination:**

**i. Whether a case has been made out for setting aside of the grant issued on 25<sup>th</sup> June, 2018**

**ii. Whether the provision made to Lydia Gacheri Arachi and Esther Muthanga Rwanda is reasonable in the circumstances of this case**

13. Before I delve into the issues for determination, I find that it is necessary to address the issue of inheritance by grandchildren. In **Re estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR**, the court stated as follows:

**“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”**

14. The case at hand is however an exception for the reason that the parties herein consented to have the grandchildren inherit directly from their grandfather.

15. Whereas it is conceded that the Applicants who are daughter and granddaughter of the deceased respectively are competent to apply in Court for reasonable provision out of the estate of the deceased, the said Applicants have not controverted the averments by the 6 Applicants that Lydia Gacheri Arachi got 0.16 acres because her son Samuel Mwirichia Rwanda was apportioned 1.3 acres, that Dorcas Nkirote got 0.16 acres because her sons Boniface Murithi and Nicholas Mutuma were apportioned an acre each and that Alice Karuru Rwanda and Agnes Kangai who did not have sons got 0.60 acres each.

16. The discretion of the Court to order for reasonable provision is unfettered, but must be exercised judicially; on consideration of the facts of the case and defined factors and principles of law stipulated in Section 28 of the Act.

17. The court record reveals that **Lydia Gacheri Arachi** was in court on 25<sup>th</sup> June, 2018 when the grant was confirmed by consent of the parties and she appended her signature before the court to confirm that she had no objection to the proposed mode of distribution in which 0.16 acres was apportioned to her.

18. I have considered **Lydia Gacheri Arachi**'s claim that she thought she would get 0.60 acres like the other daughters of the deceased. The 0.16 acres apportioned to her has been explained to have arisen from the fact that 1.3 acres was directly apportioned to her son Samuel Mwirichia Rwanda. The cumulative acreage to **Lydia Gacheri Arachi** and her son is 1.46 acres and the 0.16 acres apportioned to her cannot in the circumstances of this case be said to be unreasonable.

19. Concerning Esther Muthanga Rwanda, it has been established that she was not in court on the date the grant was confirmed. Esther is a granddaughter of the deceased and does not have an equal right with the children of the deceased.

20. Consequently, I correspondingly find that Esther Muthanga Rwanda's share apportioned with the consent of other beneficiaries cannot be said to be unreasonable only for the reason that it is not equal to the respective portions of other grandchildren.

21. From the foregoing analysis, the court makes the following orders:

**1) No case has been made out for setting aside of the grant issued on 25<sup>th</sup> June, 2018**

**2) Provisions made to Lydia Gacheri Arachi and Esther Muthanga Rwanda are reasonable**

**3) Summons dated 19<sup>th</sup> July, 2021 is dismissed with costs to be borne by the Applicants**

**4) The Petitioner is directed to move without delay and complete the administration of the estate**

**DATED AT MERU THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2022**

**WAMAE. T. CHERERE**

**JUDGE**

**Court Assistant - Morris Kinoti**

**For Dependents/ Applicants - Mr.Gakuya for Carlpeters Mbaabu & Co. Advocates**

**For Petitioner/Respondent - N/A**

**For Applicants/Respondents- N/A for Thuraira Atheru & Co. Advocates**