



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**SUCCESSION CAUSE NO. 893 OF 2014**

**RE ESTATE OF KARIUKI KIMANI (DECEASED)**

**SAMUEL KARIUKI GITAU.....PETITIONER**

**VERSUS**

**MICHAEL MWANGI GITAU.....OBJECTOR**

**JUDGMENT**

1. Kariuki Kimani died intestate way back in 1966. His estate comprised of one property known as Loc. 7/Gakoigo/190 (hereafter *the suit property*).
2. On 28<sup>th</sup> November 2014, nearly fifty years later, the petitioner, Samuel Kariuki Gitau, lodged a petition for letters of administration in which he *falsely* pleaded that he was a *son* of the deceased and the *sole* beneficiary of the estate.
3. A grant was issued to him on 6<sup>th</sup> July 2015. He took out summons for confirmation of the grant on 29<sup>th</sup> September 2015 in which he proposed that the suit property devolve wholly to him.
4. However, an affidavit of protest was lodged on 17<sup>th</sup> February 2016 by Michael Mwangi Gitau (hereafter *the protestor*).
5. The core of the protest is that the petitioner filed the cause in secret and made material non-disclosure of his true relationship with the deceased. The objector proposed that the property be distributed equally to all the beneficiaries of the deceased.
6. On 24<sup>th</sup> September 2018, I directed that the cause be determined by *viva voce* evidence. The petitioner, objector and their sister, Lilian Wanjiru Gitau, all took to the stand albeit on opposite sides.
7. I find that the deceased was in fact an *uncle* to the petitioner; and, that both the objector and petitioner are blood brothers. There are other siblings: Lilian Wanjiru Gitau, Mary Wambui Marubu and Lucy Njeri Mburu. Their father was known as *Venasio Gitau Kimani*, a brother to the deceased.
8. From the evidence, and his own admission, it is clear that the petitioner was *not* a son of the deceased. It is also not true that the deceased had willed off the property exclusively to him. Furthermore, the petitioner concealed the fact that he had a brother and three sisters. The tell-tale signs were always there: For instance, he sought to file the cause without the requisite letter from the area chief; and, he cunningly applied to have the grant confirmed before the expiry of six months. That prayer was declined by *Waweru J* on 29<sup>th</sup> September 2015.
9. The petitioner conceded in cross examination that he did not consult his siblings when he took out the letters of administration. His reasoning was that they did not assist the deceased in any way; and, that he is the one who buried the deceased. I took that explanation with a pinch of salt.
10. I am satisfied that the deceased never married and had no children. His closest surviving relatives are the children of his brother, Venasio Gitau that I have named above. From an evidential and legal standpoint, the petitioner did *not* rank any higher in priority than the objector or their sisters.
11. In the end, I find that the grant was obtained clandestinely and by concealment of material facts. Under powers donated by Rule 73 of the ***Probate and Administration Rules***, and to ensure that the ends of justice are not defeated, I *revoke* the grant issued to the petitioner on 6<sup>th</sup> July 2015. A fresh grant shall issue *jointly* to the petitioner and objector.

12. For the same reasons, it would be unjust for the petitioner to disinherit his siblings. I readily find and hold that the suit property shall now be divided *equally* among all the children of Venasio Gitau named above. The **Law of Succession Act** does *not* discriminate between sons or daughters or even married daughters.

13. My final orders are as follows-

(a) That the grant issued to the petitioner on 6<sup>th</sup> July 2015 be and is hereby *revoked*.

(b) That a fresh grant shall issue *jointly* to the petitioner and objector.

(c) That Loc. 7/Gakoigo/190 shall be distributed in *equal shares* to Samuel Kariuki Gitau, Michael Mwangi Gitau, Lilian Wanjiru Gitau, Mary Wambui Marubu and Lucy Njeri Mburu.

(d) The grant shall be confirmed in terms of this judgment.

(e) Costs follow the event and are at the discretion of the court. In the interests of justice, each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 2<sup>nd</sup> day of March 2021.**

**KANYI KIMONDO**

**JUDGE**

**Judgment read in open court in the presence of:**

Mr. T. M. Njoroge for the petitioner.

Objector (in person) absent.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.