



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3520 OF 2003

IN THE MATTER OF ESTATE OF MOSES GACHUHI MACHARIA – (DECEASED)

LEONARD MACHARIA.....1ST APPLICANT

JOSEPHAT NGUIYA.....2ND APPLICANT

VERSUS

HANNAH MUTHONI GACHUHI.....1ST RESPONDENT

MONICAH WANGARI GACHUHI.....2ND RESPONDENT

RULING

1. The deceased Moses Gachuhi Macharia died on 2nd November 2000 at Ol Kalou Hospital. He left three widows, two of whom are the respondents Hannah Muthoni Gachuhi and Monica Wangari Gachuhi. Each house has children (sons and daughters). On 11th December 2003 the applicants Leonard Macharia and Josephat Nguiya (two of the sons of the deceased) petitioned the court for the grant of letters of administration intestate. The grant was issued on 18th May 2005. The grant was revoked on 28th February 2007 on the basis that the applicants had petitioned for the grant without reference to the other members of the family and had not revealed that the deceased had left a Will dated 30th August 2009.

2. On 29th January 2007 the respondents petitioned for the grant of probate with written Will annexed. The applicants filed the present application dated 16th September 2010 seeking that the annexed Will of the deceased that was deposited into court by the respondents be released to Antipas Nyanjwa, a forensic documents examiner with the Kenya Police, for examination to confirm the deceased's signature on the Will. Their case was that the signature on the Will that is attributed to the deceased was not his. When they took a copy of the Will to Antipas Nyanjwa, he asked them to take the original so that he would conduct an examination to verify the signature.

3. A replying affidavit was sworn by Daniel Macharia (who had authority of the said 2nd respondent) to oppose the application. His case was that when on 15th September 2010 Antipas Nyanjwa wrote to the applicants seeking to have the original Will for examination they (the applicants) did not make a follow-up. Instead, it was the applicants who made a follow-up, and got Antipas Nyanjwa to examine the original Will and he produced a report, which is annexed to the affidavit, showing that indeed it was the deceased who signed it. It was Daniel Macharia Gachuhi's case that the application had been overtaken by events.

4. I agree that Antipas Nyanjwa of the Kenya Police Criminal Investigations Department did on 17th December 2010 examine the Will and expressed the opinion that it was made by the deceased. Antipas Nyanjwa is a forensic documents examiner, voice and acoustics analyst with the Kenya Police. What the applicants sought to be done has already been done.

5. Consequently, the application is dismissed with costs.

6. This is a very old matter which has remained unresolved. In the wider interests of justice, and because this cause had already been gazetted before the grant of letters of administration intestate was issued to the applicants, before the same was revoked, and because there is apparently no dispute as to the beneficiaries, I direct that the respondents Hannah Muthoni Gachuhi and Monicah Wangari Gachuhi be jointly issued with grant of probate with Will annexed. I further direct that within 60 days they should file and serve an application for the confirmation of the grant. Lastly, following the application for confirmation, any party will be at liberty to challenge not only that application, but also the validity of the Will, and such applications shall be mentioned for directions on how they will be disposed of.

7. Costs shall be in the Cause.

DATED and SIGNED at NAIROBI this 3RD day of JUNE, 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 6TH day of JUNE, 2019.

A. ONGERI

JUDGE