



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 423 OF 1986

IN THE MATTER OF THE ESTATE OF GITHUA MURIU MWANIKI - (DECEASED)

AMOS NG'ANG'A.....OBJECTOR/APPLICANT

VERSUS

EUNICE WANJIRU.....1ST RESPONDENT

SAMUEL NJOGU.....2ND RESPONDENT

JUDGMENT

1. The deceased Githua Muriu died intestate on 18th January 1986 at Gikambura in Kiambu. He left the following parcels:-

- (a) Karai/Gikambura/T.99;
- (b) Karai/Gikambura/4;
- (c) Karai/Gikambura/T.405;
- (d) Plot No. 48 Lusigitti Market;
- (e) Plot No. 62 Lusigitti Market;
- (f) Dagoretti/Kangemi/263/27;
- (g) shares at Embakasi Ranching Co. Ltd; and
- (h) savings account.

2. On 10th June 1986 his widow Eunice Wanjiru Githua and son Samwel Njogu Muriu (the respondent) petitioned the court for the grant of letters of administration intestate. The other children between the deceased and Eunice Wanjiru Githua were Peter Mwaniki Githua and John Mwaura Githua. The grant was issued on 2nd September 1986, and a certificate of confirmation issued on 6th April 1987 in which the entire estate went to Eunice Wanjiru Githua.

3. On 20th January 2010 the applicant Amos Nganga Githua filed the present summons for the revocation of the grant. The application was filed under **section 76** of the **Law of Succession Act (Cap 160)**. The grounds were that:-

- a) the proceedings leading to the grant were defective in substance;
- b) the grant was obtained by concealment from the court of facts material to the case;
- c) it was not true that the deceased had only one house, that infact he had two wives (Eunice Wanjiru Githua and Gladwell Kanyi

Githua) each of whom had children;

d) the applicant was from the house of Gladwell Kanyi Githua; and

e) the applicant and the members of his mother's house were never informed by the petitioners that they were filing the petition, and their consent to the proceedings was neither sought nor obtained.

4. The respondent's response to the application was that the deceased did not have another wife or other children; that the dispute had been caught up by **section 4** of the **Limitation of Actions Act (Cap 22)**, the confirmation having been done over 12 years before the filing of the application; and that the applicant had filed another **Cause No. 1923 of 1998** which he had failed to prosecute.

5. The matter proceeded by way of oral evidence to determine the question whether the deceased had one family or two families. All other issues, including whether or not the applicant was to benefit from the estate, were to flow from this. The applicant testified and called two witnesses Francis Njuki Njomo (PW 2) and David Wanyoike (PW3). The respondent testified and did not call witnesses. The respondent was represented by Ms Mungai.

6. There is no dispute that Eunice Wanjiru Githua died in 2016, leaving the 2nd respondent as the only administrator.

7. In **HCCC No. 1923 of 1998** at Nairobi the applicant, after hearing that the respondent and his mother had a confirmed grant, sued them seeking that they be declared to be holding the estate in trust for the members of his house. It was subsequently advised that he seeks the revocation of the grant, which he did in the present proceedings. His case was that he learnt of the succession proceedings long after the matter had been concluded. He stated that, as a result, his mother's house was disinherited. According to him, his mother had in all 10 children. His mother died subsequent to the deceased's death. Eunice Wanjiru Githua had 10 children as well.

8. What I found interesting was that none of the siblings of the applicant came to court to testify, or at all, during this application. There was no explanation for this. Was it because they were not interested in the estate?

9. It was also notable that following the deceased's death, the applicant and his mother laid a claim to the estate. This was in 1995. The matter was heard by the local administration who advised that they seek the nullification of the grant.

10. The applicant stated that he was the deceased's son by Gladwell Kanyi Githua; that they had participated in the burial of the deceased but were not made aware of the proceedings leading to the grant. After the grant, his family was chased from Gikambura land. When cross-examined, he stated that his mother had stayed with the deceased till 1976 when they separated. She went to stay at Muguga. He did not know when the deceased married his mother. He did not call any witness who witnessed the marriage ceremony between the two, or who was privy to any dowry negotiation or payment. PW 2 stated that he was the applicant's cousin, his father having been cousin to the deceased. He stated that he and the applicant grew together in the same village, and that he knew the applicant's mother. He stated that his father was still alive. He went on as follows:-

“Mwaura and Njogu claimed that PW 1 is not their brother but that is not true. These are all children of Githua. Even chief knows about this. I have always seen them together.”

If the applicant and PW 2 grew up together, then it is likely that they are of the same age-bracket. PW 2 did not know when the deceased married the applicant's mother. His (PW2's) father is alive. The deceased was his cousin. The father ought to have been called to talk about the marriage, if at all, between the deceased and the applicant's mother. He was not called. There was no explanation. Secondly, PW 2 said the chief knew about the family. He was not called, again without explanation.

11. PW 3 testified that his grandfather and father of the deceased were brothers, and that he knew the applicant to be son of the deceased and brother to the respondent. When cross-examined, this is what he stated-

“I know Kikuyu marriage customs. There is ceremony and payment of dowry. I know about “ngurario” and “ruracio”. When Githua married I was about 11 years old. I do not know what transpired.”

The applicant claimed that his mother married the deceased under Kikuyu customary law. The marriage was not proved. The known customs signifying marriage were known to the applicant. He did not show that they were performed between the deceased and his mother.

12. I find that there was no material evidence to show that he (the applicant) was the son of the deceased. There was no material evidence to show that his mother constituted the second house of the deceased.

13. In conclusion, I do not find merit in the applicant's application for revocation. I dismiss it with costs.

DATED and SIGNED at NAIROBI this 6TH day of MARCH 2018.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 7TH day of MARCH 2018.

R.E. OUGO

JUDGE