



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSES NO. 271 OF 2005**

**In the matter of the Estate of GACOKI MUCHIRA (Deceased)**

**SIMON MUCHIRI GACHOKI.....ADMINISTRATOR/APPLICANT**

**V E R S U S**

**PAULINE MUTHONI GACHOKI.....1ST RESPONDENT**

**WILLIAM NJOGU GACHOKI.....2ND RESPONDENT/ADMINISTRATOR**

**R U L I N G**

1. This is a ruling on summons for rectification of grant dated 16/04/2018 filed by the Applicant/Administrator. It is supported by his affidavit sworn on 16/04/2018 as well as grounds on the face of the application.
2. It is deposed that the grant was confirmed on 23/06/2008 in favour of the two administrators and distributed the assets of the deceased. One of the beneficiaries Juliana Njeri Gachoki has since passed on before the implementation of the grant.
3. It is proposed in the application that the shares of the late Juliana be taken by her children as follows:-

**Land Parcel No. Gichugu/Settlement/884**

*Madvine wairimu Gachoki* - ½ acre  
*Rafaera Wanja Muriuki* - ½ acre  
*Lucy Wanjiru Ndambiri* - ½ acre  
*Purity Njoki Muchiri* - ½ acre  
*Pauline M. Gachoki* - 2 acres

**Land Parcel No. Gichugu/Settlement/511**

*Symon Muchiri Gachoki* - 8 acres  
*Pauline M. Gachoki* - 8 acres

4. The application was opposed by the 1<sup>st</sup> respondent and the 2<sup>nd</sup> widow of the deceased in her replying affidavit sworn on 19/04/2018. She deposes that the applicant's mother who is now deceased held her shares in trust for her children. She states that the shares of Juliana should be distributed by way of settlement within the family. She was opposed to the applicant taking the bigger share (8 acres) while his sisters take ½ acre each from their late mother's share.
5. I have perused the court file and noted that this is an old case. The grant was confirmed on 23/06/2008 and since then it has not been executed. The deceased had two houses who were represented by sons in the representation of grant. Although the two widows were alive when this case was filed, it appears they agreed to have their sons appointed as administrators of the estate.
6. The applicant herein represented the 1<sup>st</sup> house while the 2<sup>nd</sup> respondent William Njogu Gachoki represented the 2<sup>nd</sup> house.

7. Distribution in this case was done in accordance with Section 40 of the Law of Succession Act, that is equally between the two houses as follows:-

**Land Parcel No. Gichugu/Settlement/884**

Juliana Njeri Gachoki - 2 acres

Pauline M. Gachoki - 2 acres

**Land Parcel No. Gichugu/Settlement/511**

Juliana Njeri Gachoki - 8 acres

Pauline M. Gachoki - 8 acres

8. It is noted from the grant that the widows of the deceased are the ones who took the shares of their respective houses. The children did not get any share at that time giving the impression that they were projecting inheritance from their parents should they predecease them.

9. The application for rectification of grant is intended to redistribute the shares of the deceased widow Juliana Njeri Gachoki to her children who are the 1<sup>st</sup> administrator/Applicant being the only son and four (4) daughters.

10. The respondents are from the second house and seem not happy with the sharing. It seems that the 1<sup>st</sup> respondent has appointed herself a mouth piece for the first house not withstanding all the surviving beneficiaries from the 1<sup>st</sup> house have no problem in sharing their late mother's share. William Njogu the 2<sup>nd</sup> respondent has joined his mother in opposing the application for rectification in blatant disregard that it does not affect their share in the grant and that it does not concern them.

11. The record shows that the respondents who are from the 2<sup>nd</sup> house have been filing application after application all of which have been dismissed. This has caused undue delay in the implementation of the grant.

12. The 2<sup>nd</sup> respondent filed an application dated 3/06/2008 seeking to revoke the grant dated 20/05/2008 which was dismissed on 31/07/2013 by Ongudi, J. for lack of merit. His earlier application dated 22/05/2008 seeking for orders to file a protest after confirmation of grant was dismissed by Wanjiru Karanja, J. on grounds that he had been given a chance to do so earlier but failed to comply.

13. In dismissing the application dated 31/07/2013, Ong'udi, J. said:-

*Having found that the deceased had 2 wives who had 5 children each, the estate was divided into two equal portions. This is in strict compliance with Section 40(1) of the Law of Succession Act. There has been nothing availed before this court to enable me interfere with the said confirmed grant.*

14. Ong'udi, J. echoed the dicta of Wanjiru Karanja, J. in her ruling delivered on 31/07/2013 dismissing the 2<sup>nd</sup> application of the 2<sup>nd</sup> respondent.

15. The issues raised by the 1<sup>st</sup> respondent in opposition of this application have been decided and ruled on by three judges including Khaminwa, J. who confirmed the grant and strictly complied with the provisions of Section 40 of the Act. This court need not revisit issues determined earlier by courts of equal and competent jurisdiction.

16. The respondents have delayed the implementation of the grant for about ten (10) years to date. Their persistent applications have only served to delay justice for the beneficiaries in the estate. There was no appeal lodged against the rulings of the judges mentioned. The estate was divided in equal shares between the two houses who had an equal number of children, five in each house.

17. Each house have their own shares and have the right to decide on redistribution as is the case here without interference by the other house.

18. The applicant and his siblings have the right to redistribute the shares of their deceased mother among themselves as they have done in this application. The second house should manage the shares of their own house.

19. Due to the animosity between the houses which this court has witnessed during the hearing of this application, this court will give orders to facilitate the implementation of the grant in the interest of justice.

20. I therefore find the application merited and allow it in the following terms:-

(a) That an amended grant to issue in terms of the applicant's affidavit.

(b) That the Deputy Registrar of this court is hereby authorized to execute all the necessary documents for implementation of the grant in place of any of the administrators who may become uncooperative.

21. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 3RD DAY OF JULY, 2018.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Applicant**

**Respondent**

**All beneficiaries**