



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 791 OF 2004

IN THE MATTER OF THE ESTATE OF GITAU MURAGE (DECEASED)

RULING

1. The Applicants herein Julia Muthoni Mburu, Bernard Githu Mburu and Joseph Ndungu Mburu have come to court vide summons dated 8th July 2016 and filed the same day seeking rectification/alteration of a grant issued and confirmed on 2nd June 2011. The application which is purportedly filed pursuant to rule 74 of the Probate and Administration rules Cap 160 of the Laws of Kenya is premised on a supporting affidavit jointly sworn by the Applicants on 8th July 2018 and filed the same day.

2. Briefly, this file has had a long history starting from Murang'a Principal Magistrate's Court where the grant was confirmed under file No. 149/1996. The grant was however revoked at the high court under this file and a fresh grant of letters of administration issued on 2nd June 2011 to Julia Muthoni Mburu, Hannah Wambui Mburu and Gachihi Gitau as joint Administrators. The grant was concurrently confirmed and the estate distributed as follows:

a. Loc 4/Gatitu/30 allocated to Mary Nyanjuki Nganga as sole beneficiary and as trustee for herself and her children in equal shares.

b. Loc 7/Ichagaki/635 allocated to Gachihi Gitau, John Wainaina Gitau, Sammy Muiruri Gitau and Hannah Wambui Mburu in equal share.

3. Subsequently, Gachihi Gitau and Hannah Mburu being co-Administrators died before completion of the administration of the estate. Besides, Mary Nyanjuki a beneficiary to the estate also died sometime on 22nd November 2006 long before the grant was confirmed. It is the Applicants' contention that the names of the deceased co-administrators be removed and the only surviving Administrator be left to administer the estate and discharge the necessary duties till completion. Further, the Applicant sought to have the estate redistributed to reflect new beneficiaries (heirs) being children of the deceased beneficiaries without altering their individual entitlement.

4. In response to the application, one Charles Njaramba Chege who claimed to be a creditor to the estate alleging purchaser's interest filed a replying affidavit sworn on 27th July 2016 urging the court not to rectify the grant without making provision for 1.2 acres out of LR Loc.7/Ichagaki/635 which he had purportedly bought on 2nd June 2000 from Gachihi Gitau one of the beneficiaries of the estate (now deceased). On the same breath, one John Murigi Mwangi also opposed the application vide his replying affidavit deponed on 27th July 2016 and filed on 5th August 2016 alleging purchaser's interest and claiming to have bought 0.5 acres out of LR Loc.7/Ichagaki/635 from Mbuki Gitau a widow of Gachihi Gitau (a beneficiary to the estate).

5. Another Respondent by the name of Sammy Muiruri Gitau came on board thus opposing the application vide his replying affidavit sworn on 21st October 2016 and filed on 14th December 2016 claiming that the grant issued and confirmed on 2nd June 2011 was irregular as Gachihi Gitau one of the administrators had long died the year 2005. Claiming to be a brother and next of kin to the deceased Gachihi Gitau whom he claimed had no wife nor children, Sammy Gitau and John Wainaina sought to have the share of Gachihi Gitau given to them to share equally.

6. When the matter came for hearing on 16th July 2018, the court directed for the application dated 8th July 2016 to be heard first. The hearing was then scheduled for 31st July 2018. On that day, Gichohi advocate for the Petitioner/Applicant appeared but the rest of the Respondents' counsels did not turn up. However, Sammy Gitau who is not represented appeared in person. The case therefore proceeded in their absence with the parties adopting their respective affidavits to ventilate their case.

7. Upon conclusion of the hearing, counsel for the Applicant/Petitioner relied on their submissions filed earlier on 17th September 2017 in which he reiterated the contents contained in the affidavit in support of the application. Meanwhile, John Murigi Mwangi and Charles Njaramba Chege lodged summons dated 20th April 2017 and filed 24th April 2017 seeking inclusion of their names as beneficiaries of the estate courtesy of the purchaser's interest aforementioned. They therefore sought rectification of the grant confirmed on 2nd June 2011 so as

to recognize them as creditors and therefore entitled to their respective portions out of the Gitau Gachihi's share. This application is however pending hearing and determination.

8. I have considered the application herein, supporting affidavit and replying affidavits. The key issue for determination is whether the prayers sought can be granted under Section 74 of the Probate and Administration rules.

9. The law governing rectification of grants is anchored under Section 74 of the Law of Succession and rule 43 (1) of the Probate and Administration rules. Under the two provisions, a grant can be altered, amended or rectified in situations where errors in names and descriptions or in setting out time and place of the deceased's death, or the purpose in a limited grant is alleged and proved.

10. In the instant application, the Applicant is seeking to have the names of the deceased Co-Administrators removed leaving the surviving Administratrix Julia Muthoni Mburu as the sole Administratrix. There is no dispute that Hannah Wambui Mburu and Gachihi Gitau have since died. In the circumstances, the relevant law applicable is Section 81 of the Law of Succession which provides:

“upon the death of one or more several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them”.

11. Based on the dictates of Section 81 aforesaid, Julia Muthoni Mburu being the only surviving Administratrix is automatically entitled to take the powers and duties of administration of the estate. The argument by Sammy Muiruri in his replying affidavit that the grant issued on 2nd June 2011 and confirmed the same day as erroneous is water under the bridge. Nobody opposed the inclusion of Gitau Gachihi as one of the Administrators of the estate on 2nd June 2011. We cannot operate in the reverse gear at this point in time. This is an old file which must be concluded. Litigation must come to an end. Equally, the contestations by John Muriigi and Charles Njaramba have no room as they are not opposed to Juliana being the sole Administratrix.

12. Having held as such, a fresh grant of letters of administration shall issue to Julia Muthoni Mburu as the sole Administratrix. The confirmed grant shall equally be rectified to reflect her as the Administratrix.

13. I wish now to turn to the prayer to substitute the deceased beneficiaries with the deceased's heirs. I have perused the averments contained in the supporting affidavit wherein Bernard Kamande Nganga and Francis Muiruri Nganga are claiming to be sons of Mary Nyanjuki Nganga the deceased beneficiary. There is no proof that any of the heirs had acquired a grant in respect of the deceased parent's estate to be able to prove that they are the authentic beneficiaries of the deceased beneficiaries' share.

14. The Applicants have not listed the heirs in respect to each deceased beneficiary to confirm the rightful beneficiaries (heirs). Mr. Kamande for the Applicants submitted that ¼ share from the estate of Gitau Gachihi now deceased be allocated to Hannah Wambui. Hannah Wambui is already deceased and I have been asked to remove her name as the administrator which I have already done. How can a deceased person be allocated land?

15. For the above reasons stated, I do not find merit in prayer 2 of the application hence the same is disallowed and the Applicants shall be at liberty to file appropriate application seeking proper orders. In a nut shell, I do allow prayer one of the application to the extent that the names of the deceased Administrators namely Hannah Wambui Mburu and Gachihi Gitau now deceased be and are hereby removed from the grant of letters of administration and certificate of confirmation of grant and a fresh grant do issue in the name of Juliana Muthoni Mburu. The certificate of confirmation dated 2nd June 2011 shall accordingly be rectified to reflect the said changes.

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER, 2018.

J.N. ONYIEGO

JUDGE