

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1869 OF 1999

IN THE MATTER OF THE ESTATE GACHECHE HOSEA (DECEASED)

RULING

1. The deceased herein died on 15th June 1999.
2. Representation to the estate was sought in the matter in a petition filed herein on 31st August 1999 by his widow, son and daughter. According to the petition, he was expressed to have been survived by his widow - Elizabeth Muthoni Gacheche, his son – Andrew Gathambo Gacheche, and seven daughters – Jeanne Wanjiku, Joy Mumbi, Anne Wairimu, Dorothy Mwihaki, Catherine Wangui, Eva Nyathogora and Nyatetu. He was said to have died possessed of Nyeri Mun/Block III/161, LR Nos. 37/242/15, 209/354/18 and 7022/9, Kirimukuyu/Kiria/638, CFC Bank Account No. 010366 and Barclays Bank Account at Moi Avenue Branch. A grant of letters of administration intestate was made on 23rd November 1999.
3. The grant was confirmed on 13th June 2000; vide an application dated 11th April 2000. The estate was devolved wholly upon the widow, Elizabeth Muthoni Gacheche. At that stage two more assets had been added to the schedule of assets, that is to say Kirimukuyu/Mbogoini/562 and LR No. 209/7383/18.
4. The application that I am required to determine is dated 7th February 2014. It is brought at the instance of Alice Nyakinyua Gathambo, who seeks revocation of the grant herein. From the grounds set out on the face of the application, it appears that she is unhappy with Kirimukuyu/Kiria/638 being listed as an asset in the estate of the deceased herein. Her case is that she and the deceased were half-siblings, and the said property was family property which ought to have been shared out between the two households of their deceased father. She asserts that the deceased was only entitled to a portion of the said property. The applicant has sworn an affidavit which sets out the facts upon which the application is predicated. There are also affidavits in support sworn by a neighbor of the parties, a sibling of the applicant and a grand-daughter of the deceased.
5. The response to the application is through an affidavit sworn on 2nd March 2016 by one of the administrators, Elizabeth Muthoni Gacheche, the widow of the deceased. She asserts that Kirimukuyu/Kiria/638 was legally owned by the deceased as demonstrated in the documents attached to the applicant's supporting affidavit. She denies that the property was registered in the name of the deceased in suspicious circumstances. She states that the deceased's father had distributed his property amongst his children by 1976.
6. The replying affidavit prompted a response by the applicant's brother, Samuel Gacheche Gathambo, vide an affidavit sworn on 8th October 2013. He describes how their deceased father stated ailing in 1974 and died in 1980/1986. At a meeting held in 1977 the father of the parties hereto allegedly gave his wishes as to how he wanted his assets distributed, and gave copy of the title to Kirimukuyu/Kiria/638 to the deceased herein to secure funds to acquire a certain property. It is alleged that the deceased herein did not return the title to their father.
7. Several documents have been attached to the several affidavits filed herein. The document that I find to be of particular interest is the green card to Kirimukuyu/Kiria/638. The register for that property opened on 1st July 1959, when the father of the parties hereto, Gathambo s/o Gacheche was registered as proprietor thereto. The ownership particulars changed on 24th February 1976 when the original proprietor's name was cancelled and replaced with that of Gacheche Hosea.

8. The application before me is brought under section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. Under that provision, a grant is liable to revocation where there are problems with the process of obtaining the grant, with administration and where the grant has become useless and inoperative. The applicant's principle complaint is limited to the inclusion of Kirimukuyu/Kiria/638 among the assets listed in the distribution of the estate of the deceased herein. The applicant does not appear to have any other complaint, yet the deceased herein owned other assets which are not subject to the instant application.

9. I am not satisfied that a proper case has been presented for revocation of the grant herein. As noted above, the deceased was said to have had nine assets, yet the applicant is complaining about only one. There is also no allegation that the persons listed as his survivors were not in fact the rightful survivors or heirs of the deceased. The process of obtaining the grant appears to me to have been above board.

10. The application dated 7th February 2014 revolves around the property known as Kirimukuyu/Kiria/638. From the record before me the said property was originally registered in the name of the father of the deceased herein and the applicant. It is not disputed that the property changed hands in 1976 and was then registered in the name of the deceased herein. The dispute centres on how it came to be transferred to the name of the deceased.

11. The administrators' case is that the property had been gifted to the deceased by his father, while the applicant's case is that the same was wrongly transferred to the deceased. The applicant states that the deceased had been given the title documents for the property so as to secure a loan with it, and he did not thereafter return the documents to the deceased. The suggestion is that he fraudulently had it transferred to his name. There is also the allegation that the deceased's father had called a meeting 1977 when he distributed his property and also gave copy of the title document to the deceased herein. However, according to the green card, the property was transferred to the name of the deceased in 1976, prior to the events of 1977.

12. I do not find material upon which I can conclude that there was any wrong doing on the part of the administrators, or to suggest that Kirimukuyu/Kiria/638 unlawfully came into the hands of the deceased or that the applicant was entitled to part thereof. I shall accordingly dismiss the application dated 7th February 2014, with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE