

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1304 OF 2012

**IN THE MATTER OF THE ESTATE OF SOSPETER GATHUKA PETROL GATHEGE
(DECEASED)**

RULING

1. The deceased herein died on 24th February 2009. Representation was sought in the estate in a petition filed in Githunguri PMSC No. 1 of 2015 by Michael Karanja Gathuka, in his alleged capacity as a son of the deceased. He was listed in the petition as the sole survivor of the deceased. There is on record a letter from the Chief of Ikinu Location which describes the petitioner as the only survivor of the deceased. The deceased was said to have died possessed of Muguga/Gitaru/133, Plot No. 550 Scheme 254 – Kitiri and Plot No. P1 802 Scheme Tulaga. A grant of letters of administration intestate was accordingly made to the petitioner. The said grant was confirmed on 15th April 2015, and a certificate to that effect duly issued devolving the entire estate to the administrator.

2. Another cause was initiated in this cause on 29th January 2015 in respect of the same estate. The latter cause was at the instance of Agnes Waithira Gathuka and Edith Gathoni Kariuki in their purported capacities as widows of the deceased. The deceased was expressed to have been survived by five widows and thirty three children. The administrator in Githunguri PMSC No. 1 of 2015 is listed as one of the children. The deceased was expressed to have died possessed of the assets listed in Githunguri PMSC No. 1 of 2015, as well as other assets in Naivasha and shares in various firms.

3. There are two applications on record seeking revocation of the grant made in Githunguri PMSC No. 1 of 2015. One is dated 30th July 2015 and the other is dated 2nd September 2015. In both applications it is pleaded that a large number of the survivors of the deceased had been concealed from the court, and stood to be disinherited. The administrator in Githunguri PMSC No. 1 of 2015 responded to first application only. He admits that the deceased had several wives and children; he however justifies his conduct on the basis that he had a power of attorney from the deceased giving him charge of his affairs.

4. I need not expend a lot of judicial time considering the merits of the applications before me. It is obvious that Githunguri PMSC No. 1 of 2015 was filed with a malicious intention of disinheriting some over thirty individuals. Such proceedings cannot possibly be allowed to stand. I have noted that none of the landed assets are situated within the Nairobi, instead they are scattered within Kiambu, Nakuru and Nyandarua Counties. It would appear that the family resides at Kikuyu, Kiambu.

5. The orders that I am moved to make are as follows:-

(a) That the grant made in Githunguri PMSC No. 1 of 2015 on 30th March 2015 to Michael Karanja Gathuka is hereby revoked;

(b) That the cause in Githunguri PMSC No. 1 of 2015 shall be consolidated with the instant cause which shall be the lead file;

(c) That the cause herein shall be transferred to the High Court of Kenya at Kiambu for disposal of the pending business.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE