



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3007 OF 2013

IN THE MATTER OF THE ESTATE OF CHEGE WAGACHA alias CHEGE KIONGI
(DECEASED)

JUDGMENT

1. The deceased herein died on 24th July 1987. Representation to his estate was thereafter sought in Kiambu SRMCSC No. 148 of 2000, in a petition filed therein on 9th June 2000, by J W C and S C W, in their respective capacities as daughter and grandson of the deceased.
2. In the petition the deceased was expressed to have been survived by nine (9) individuals; being a widow, a daughter in law, five (5) daughters and two (2) grandchildren. The widow was named as H W C, and the daughter in law as J N W . The daughters were said to be J W C , M W C, N W C L W C and N W K. The latter daughter was described as married. The grandchildren were S C W and S C W. The deceased was said to have died possessed of only two assets – Githunguri/Githunguri/268 and thirteen (13) shares in the Githunguri Constituency Ranching Company Limited.
3. The petition was accompanied by a consent to the making of the grant dated 28th June 2000, duly executed by five (5) of the named survivors of the deceased who were not themselves applying for grant of representation. Those who are reflected as having signed the consent were H W C , J N W, M W C, N M C and L W C .
4. The survivors who were not applying for grant and who did not sign the consent, and whose names were not typed in the document, were N W K and S C W. No reason emerges from the document as to why the names of these two were not reflected, but I have noted from the petition that the two were a married daughter of the deceased and a minor grandchild of the deceased.
5. On 6th November 2000, N W K lodged an objection to the making of grant to the petitioners on the principal ground that the petitioners had moved the court for the grant without involving her. She expressed the fear that they intended to disinherit her. The objection was supported by an affidavit sworn on 6th November 2000. She also lodged a cross-petition on 14th November 2000 on similar grounds.
6. It was directed on 17th October 2001 that the cause be gazetted and a notice be accordingly pinned on a noticeboard at the courthouse. For some undocumented reason, the notice in the *Kenya Gazette* was not published until eight (8) years later on 24th April 2009 vide Gazette Notice Number 4262. A grant of letters of administration intestate was accordingly made to the petitioners on 4th June 2009.

7. The administrators appointed by the grant dated 4th June 2009 applied for the confirmation of the grant vide an application dated 22nd January 2010. In the affidavit purported to have been sworn by the administrators on even date, the typewritten name of N W K was cancelled by ink pen and replaced with that of L W C , the effect of which was that the said N W K was not listed among the children who survived the deceased. In paragraph 5 of the affidavit, where the assets are distributed, the said N W K was not allocated a share in the estate.
8. The confirmation application filed in court on 18th February 2010 was accompanied by a consent to the proposed distribution, dated 22nd January 2010. In the consent form, the typewritten name of the N W K is cancelled out and substituted with that of L W C. The said N W K did not sign the consent form.
9. The said application came for hearing on 17th March 2010. In attendance were J W C, S C W , J N, M W , M W C and L W C. N W K did not attend court at the said hearing, and there is nothing on record to indicate whether she had been served with the application and notified of the hearing of 17th March 2010.
10. The grant was confirmed on 17th March 2010, and a certificate of confirmation of grant of even date duly issued. It distributed the two assets that made up the estate of the deceased to the exclusion of N W K.
11. N W K then approached this court in the instant cause by a summons for the revocation of the grant made in Kiambu SRMCSC No. 148 of 2000. Her application appears to target the confirmation orders made on 17th March 2010. In the affidavit in support of the application, she complains that the grant was obtained without her being consulted or involved. She further complains that although she had filed a notice of objection, the lower court proceeded to confirm the grant without granting her an opportunity to be heard on her objection. She states that she was not involved in the confirmation process which resulted in her being disinherited.
12. When the matter was placed before me on 15th December 2014, I directed that the application for revocation of grant be served. I gave directions on 8th July 2015 on the disposal of the application, by affidavit and oral evidence. That was after service of the application on the respondents and their attendance in court. The respondents did not file their papers in response to the application. I fixed the matter for hearing on 6th October 2015.
13. When the matter came up for hearing on 6th October 2015, the applicant gave oral evidence and was cross-examined by the respondents. Her testimony mirrored the contents of the affidavit she swore in support of her application, the fact that she was excluded from the process of applying for the grant and the distribution of the estate. She was cross-examined by the respondents.
14. When she concluded her testimony and closed her case, I fixed the matter for the hearing of the respondents' case on 20th January 2016. Come 16th January 2016, the applicant attended court, but the respondents did not. They therefore did not offer any evidence. I concluded that they did not wish to offer any evidence, and I directed that I would decide the matter on the basis of the available evidence.
15. The application is premised on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, which provides for revocation of grants of representation. A grant may be revoked on three general grounds – problems associated with the process of obtaining the grant, difficulties with the process of administration of the estate and the fact of the grant having become useless and inoperative.
16. The applicant appears to ground her case on the first general ground, that the process of obtaining the grant had been attended by defects and fraud. She asserts that she was not involved in the

process of applying for grant, neither had she been consulted.

17. I have carefully scrutinized the record of the lower court and noted that although the applicant's name was listed amongst the survivors, the said name was not in the list of those who consented to the petitioners applying for the grant. She did not sign the consent, and in any event her name was not even in the consent form. This lends credence to her claim that she was not involved in the process.

18. The record also reflects a notice of objection to the petition by the petitioners, which was accompanied by a supporting affidavit, where the applicant protested that she had not been involved in the filing of the petition. She even cross-petitioned. Quite clearly the applicant was not at all involved in the process.

19. What transpired at the confirmation process also confirms her exclusion. Her name was removed from the list of survivors of the deceased, despite the fact that she was a daughter of the deceased. She was not invited to attend court at the confirmation hearing and was therefore not given an opportunity to state her case, either for or against the distribution proposed by the administrators.

20. From the material placed before me, I am satisfied that the applicant has made out a proper case for the revocation of the grant made on 4th June 2009 in Kiambu SRMCSC No. 148 of 2000 to Jane Wahu Chege and Samuel Chege Wagacha.

21. Consequently, I am moved to make the following orders: -

- a. **That grant of letters of administration to J W C and S C Won 4th June 2009 in Kiambu SRMCSC No. 148 of 2000 is hereby revoked.**
- b. **That the orders made 17th March 2010 confirming the said grant are hereby set aside, and the certificate of confirmation of grant issued on the basis of the said orders is hereby cancelled and all the transactions founded on it hereby nullified;**
- c. **That the court file in Kiambu SRMCSC No. 148 of 2000, shall be returned to the Kiambu Chief Magistrates Courts with the direction that a fresh grant of letters of administration intestate shall issue out of Kiambu SRMCSC No. 148 of 2000 to J W C, N W K and S C W ;**
- d. **That the new administrators shall thereafter apply for the confirmation of the grant to be made to them; and**
- e. **That the applicant shall have costs of the application.**

DATED, SIGNED and DELIVERED at NAIROBI this 7TH DAY OF APRIL, 2016.

W MUSYOKA

JUDGE