



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
SUCCESSION MISC. APPLICATION NO. 20 OF 2014
IN THE MATTER OF THE ESTATE OF KAREIYO GACHIRIGWA
ALIAS KARIYU GACHIRIGUA(DECEASED)

JOYCE WARUI WAMBUGU.....APPLICANT

VERSUS

PHILIPINA WAMBUI KIURA.....1ST RESPONDENT

DUNCAN MUGO KAREIYO.....2ND RESPONDENT

RULING

1. This cause relates to the estate of **KAREIYO GACHIRIGWA ALIAS KARIYU GACHIRIGUA** who died on 20th July, 1998 and the ruling is in respect to application dated 19th May, 2014 made by **JOYCE WARUI WAMBUGU** the applicant herein. In the said summons, the applicant seeks to have a grant confirmed on 14th August, 2013 vide **Gichugu Principal Magistrate's Court Succession Cause No. 33 of 2012** to be revoked or annulled on the following grounds namely:

(i) That grant was obtained fraudulently and concealment of something material to the cause.

(ii) That the applicant was not involved despite being a beneficiary.

2. The applicant has contended that she is a daughter in law to the deceased a fact that is conceded by the respondents in their response and in the petition for letters of administration presented at Gichugu Law Courts. The dependants left behind according to the parties in this cause are:

(a) Philipina Wambui Kiura (daughter to the deceased).

(b) Duncan Mugo Kareiyo (son to the deceased)

(c) Joyce Warui Wambugu (the applicant and sister in law to the deceased).

3. It is apparent that the main ground emphasized through supporting affidavit for Summons for Revocation of Grant is the manner in which distribution of the estate was done. The applicant has come to this Court to have the grant nullified so that distribution can be done afresh in a different way.

4. The 1st respondent has however, countered the reasons given by the applicant through a replying affidavit sworn on 12th June, 2014. The 1st respondent has denied the applicant's claim that she was not

involved in the succession and has annexed copy of the proceedings (Exhibit 4) from the lower court showing that she was involved. She has also exhibited forms (Exhibit 2) forming the petition for letters of administration that were executed by the applicant.

5. The 1st respondent has also deposed that after confirmation of grant at the lower court, the applicant participated in the transmission exercise where the estate was subdivided into 3 portions namely:

(a) **Baragwi/Guama/3406.**

(b) **Baragwi/Guama/3407.**

(c) **Baragwi/Guama/3408.**

6. The 1st respondent has deposed that upon acquiring her portion **Baragwi/Guama/3406** she disposed to a one John Kamunyu Mugo.

7. The applicant has not contested any of the facts presented by the 1st respondent and therefore the contents of the replying affidavit are taken by this court as unchallenged or uncontested. I have gone through the proceedings in the subordinate court and the petition for letters of administration filed. It is quite apparent that contrary to applicant's contention, she was involved in the succession at the lower court throughout. I have looked at form Probate and Administration 80 and Form 38 and find that the applicant duly executed the forms presented for petition for letters of administration in respect to the estate of KARIYU GACHIRIGUA ALIAS KAREIYO GACHIRIGWA – the deceased in this cause. A letter from the local chief dated 13th August, 2013 was filed together with the petition and the letter clearly named her as a beneficiary to the said estate. It is also glaring and instructive that the proceedings in the lower court demonstrate active participation of all the parties herein inclusive of the applicant who is indicated to have been an objector at first. Their differences were however, later thrashed through a consensus by the parties after the applicant was appointed joint administratrix on 17th April, 2013.

8. This Court finds as a matter of law that the applicant did not deserve to be appointed an administratrix in view of the provisions of **Section 66 of Law of Succession Act** which gives priority to the children of the deceased – the respondents herein. The lower court nonetheless appointed her with a view to promoting reconciliation and understanding among the family members. It is instructive to note that it was upon appointment of the applicant herein as administratrix that the parties herein later appeared in court on 13th November, 2013 for confirmation of grant and told the court that they had agreed on the issue of distribution upon which the court confirmed the grant as per their agreement.

9. I have looked at the question of distribution and find that even on that front, the applicant has no reason to complain as she and the 2nd respondent got a lion's share of 1.20 ha each while the 1st respondent was satisfied with 0.71 ha. The distribution was not done strictly in accordance with the law (**Section 38 of Law of Succession Act**) but the 1st respondent was satisfied with it which is acceptable and tenable because at the end of the day courts prefer a situation where all parties agree among themselves for purposes of promoting harmony and peace among the family members.

10. This Court finds that the Summons for Revocation of Grant dated 19th May, 2014 clearly falls short of circumstances provided under **Section 76 of the Law of Succession Act** that would make this Court revoke or annul the grant issued and confirmed in this cause. There was no misrepresentation of any kind. The distribution was fairly done and in the presence of all beneficiaries who told the court that they had agreed. The applicant's allegation that there was concealment or that she was illiterate and never knew what was going on is clearly negated by the aforesaid proceedings. The allegations at best indicate that the allegations are an afterthought and baseless at the same time. The respondents in my view proceeded regularly and in accordance with the law. The applicant was fully involved and the application is clearly lacking in merit. The same is dismissed with costs to the respondents.

Dated and delivered at Kerugoya this 10th day of May, 2016.

R. K. LIMO

JUDGE

10.5.2016

Before Hon. Justice R. Limo.,

Court assistant Willy Mwangi

Igati Mwai holding brief for Nduku for respondent

Miss Wanjiru holding brief for Chomba for applicant

COURT: Ruling signed, dated and delivered in the open court in presence of Igati Mwai holding brief for Nduku for respondent and Miss Wanjiru holding brief for Chomba for applicant.

R. K. LIMO

JUDGE

10.5.2016