



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 754 OF 2012

IN THE MATTER OF THE ESTATE OF ELIUD GACHAU TUMU (DECEASED)

GILBERT WAINAINA GACHAO APPLICANT

V E R S U S

PATRICK GACHANJA GACHAOPETITIONER/RESPONDENT

PETER NGUGI GACHAOPETITIONER/RESPONDENT

RULING

1. The Petitioners Patrick Gachanja Gachao and Peter Ngugi Gachao, moved the court under Certificate of Urgency in an application dated 16th April 2012. They sought for orders that money which was to be realised as proceeds from Maitho Trading Co. Ltd and Akuria A. Kangari, be deposited in court for purposes of preservation of the Estate of Eliud Gachau Tumu the Deceased herein.
2. The court gave the two Petitioners Limited Grant of Letters of Administration Ad Colligenda bona, limited only for the purpose of collection of assets and monies belonging to the Deceased's Estate, including dividends by Maitho Trading Co. Ltd. They were to hold the assets and monies so collected in trust for all beneficiaries of the Estate and to render a true and just account thereof whenever required by law to do so.
3. On 7th June 2012 the Applicants filed an application dated 29th May 2012 brought by way of Notice of Motion under Certificate of Urgency. In the main the application sought orders that the court do revoke the limited grant issued on 18th April 2012 to the Petitioners.
4. The grounds advanced were that the Deceased had specifically nominated Gilbert Wainaina Gachao, the Applicant herein, to inherit his shares held in Maitho Trading Co. Ltd. That the Petitioners fraudulently obtained the orders to access the shares in Maitho Trading Co. Ltd which do not belong to them, against the wishes of the Deceased and without consulting or obtaining the consent of the Applicant. That the Petitioners did not name all the beneficiaries, or list all the assets of the Estate. Further that although the Petitioner's application for grant stated that the

proceeds from Maitho Trading Co. Ltd would be deposited in court; they were in the process of obtaining the cheque in their own names.

5. The Applicant stated that the Petitioners had concealed material facts from the court, and obtained orders fraudulently and that therefore the court should revoke and annul the grant issued.
6. The Applicant filed a supporting affidavit sworn on 29th May 2012 and stated that he is the eighth born son of the Deceased, and that the Deceased before his death, had nominated and distributed his assets to his children including shares with Maitho Trading Co. Ltd which he allotted to the Applicant. He stated that the Petitioners were allotted shares in other companies being Mutoya Trading Co. Ltd and they have fraudulently obtained the special grant from the court.
7. The Applicant went further to state that the Petitioners in their application for the limited grant, had prayed that the proceeds from the said company be deposited in court, but they had since instructed their advocate to process the shares from Maitho Trading Co. Ltd in their names and they had already written to the company seeking the release of shares. He averred that the Petitioners did not disclose to the court the assets which they inherited from the Deceased's estate and which they had disposed of to benefit themselves.
8. The Applicant further stated that the Petitioners have not disclosed to the court the material facts involving the Estate of the Deceased and other assets yet to be distributed. Lastly that the Petitioners did not obtain consent from him and other adult beneficiaries to the Estate, before making the petition.
9. One of the Petitioners, Patrick Gachanja Gachao swore an affidavit in reply on 27th June 2012 on his own behalf and on behalf of his co-petitioner. In the affidavit he averred that the Objector is making his objection out of ignorance or sheer malice, as he has never been appointed as a nominee of the Deceased Eliud Gachao alias Gacau Tumu as far as the shares at Maitho Company Ltd are concerned. That indeed, the objector's application is his own confession to dealing with the Estate of the Deceased to the exclusion of other beneficiaries.
10. The Petitioner contended that Maitho Trading Company Ltd being a registered company in law, could only accommodate internal transfer of shares, using the duly authorised forms and not by word of mouth. He deponed that the minutes in the annexure marked 'GWG 1' by the objector are suspicious, as they are not duly signed, are not accompanied by minutes delegating the Deceased's shares to the objector, and no cheque number is indicated against the objector's name.
11. The Petitioner asserted that the objector is one of those persons who have frustrated any attempt to pursue a full grant for the Estate of the Deceased and it is hypocritical for him to say that his consent has never been sought. He urged the court to uphold the Limited Grant issued in this cause.
12. Mr. Ishmael learned counsel appeared for the Petitioners and submitted that the objector is one of those persons who have frustrated any attempt to pursue a full grant for the Estate of the Deceased, prompting the Petitioners to move to court to file this application for a Limited Grant Ad Colligenda bona, to safeguard the interest of other beneficiaries. That the said objector has been masquerading as an appointed nominee of the Deceased, as he has confessed in his application to dealing with the Estate of the Deceased to the exclusion of other beneficiaries.
13. Mr. Ishmael argued that based on the above and their application dated 16th April 2012, it is clear that the Petitioners' actions are those of guardians safeguarding the best interests of the other beneficiaries. That the actions of the objector on the other hand, are motivated by selfish interest as confessed in his application dated 29th May 2012. He urged that the Applicants' assertion that the shares in question were allotted to him in accordance with the wishes of the Deceased, is a gross misrepresentation of facts.

14. Mr. Ishmael submitted that the Objectors have come to court with unclean hands and he prayed that the said proceeds at worst, be deposited in court to be held until a full grant is issued and that the objectors' application be dismissed with cost to the Petitioners.

15. I have carefully considered the application, and the rival averments in the affidavit in support and in reply respectively, together with the Petitioner's submissions. I note that a full grant has never been obtained in the Estate of Eliud Gachau Tumu nor has a petition been filed to that end. It is not easy therefore to identify who the beneficiaries are and what assets the Estate comprises. The foregoing being the matrix of this cause, the orders which do commend themselves to the circumstances thereof and which I do hereby order, are as follows:-

- a. **The proceeds from Maitho Trading Co. Ltd be deposited in court within twenty-one (21) days of this date, to be held in court until a grant is obtained for the Estate of the Deceased.**
- b. **The Petitioners do file a petition for the full grant or in the alternative, a citation against any beneficiaries who have priority of right to theirs, within thirty (30) days of this date.**
- c. **There shall be no orders as to costs.**

DATED, SIGNED and DELIVERED at NAIROBI this 15th DAY OF July 2015.

L. ACHODE

JUDGE