



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1652 OF 2012**

**IN THE MATTER OF THE ESTATE OF GATHURU CHUTHA (DECEASED)**

**GRACE WANJIKU KAMAU ..... APPLICANT**

**V E R S U S**

**WANGUI GITAU .....1<sup>ST</sup> RESPONDENT**

**PAUL KARANJA GITAU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In the Summons dated 18<sup>th</sup> July 2012 Grace Wanjiku Kamau, the Applicant herein, seeks that the Grant of Letters of Administration intestate issued on the 20<sup>th</sup> July 1995 and confirmed on the 13<sup>th</sup> March 1996 to the Respondents in **Kiambu Succession Cause No. 268 of 1995** be revoked.
2. The Summons is predicated on grounds that the Grant and Certificate of Confirmation of Grant were obtained fraudulently by the making of a false statement, or concealment from the court of material facts. Further, that another Grant of Letters of Administration intestate had been issued by this Court on the 23<sup>rd</sup> November 1989 in **Succession Cause No. 957 of 1988** concerning the estate of the same deceased person.
3. The application is supported by the affidavit of the Applicant of even date. In the affidavit she deponed that she is the widow of the late James Kamau Njuguna who died on the 2<sup>nd</sup> May 2000. That her late husband and his brother Gitau Gathuru also petitioned for a Grant of Letters of Administration Intestate, in respect of their father Gathuru Chutha who died on 18<sup>th</sup> August 1980 in High Court **Succession Cause No. 957 of 1988**.
4. The two petitioners were issued with a Grant of Letters of Administration on 23<sup>rd</sup> November 1989. Later in 1995 the petitioners applied for Confirmation of Grant by a Chamber Summons application dated 31<sup>st</sup> August 1995 supported by the affidavit of James Kamau Njuguna (Deceased).
5. The applicant deponed that the Estate had only one asset being **L.R. NO. GITHUNGURI/KIAIRIA/757** measuring 5.7 acres, which was to be shared amongst the two Administrators with Gitau Gathuru getting 3.7 acres and James Kamau Njuguna getting 2 acres respectively.
6. The Applicant avers that on 11<sup>th</sup> May 1995, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents petitioned for a Grant of

- Letters of Administration Intestate in **Kiambu Succession Cause No. 268 of 1995**, without disclosing the existence of **Succession Cause No. 957 of 1988**, which was still pending. The Grant of Letters of Administration in **Succession Cause No. 268 of 1995** was issued to the Respondents on 20<sup>th</sup> July 1995 and confirmed on 13<sup>th</sup> March 1996.
7. In the application for confirmation the 1<sup>st</sup> Respondent gave to herself the whole of L.R. NO. GITHUNGURI/KIAIRIA/757, instead of taking 3.7 acres which was the entitlement of her late husband and giving the remaining 2 acres to the Estate of James Kamau Njuguna. It is the Applicant's assertion that the Respondents were aware of the existence of **High Court (NBI) Succession Cause No. 957 of 1988**, but deliberately and fraudulently concealed this fact from the Court dealing with **Kiambu Succession Cause No. 268 of 1995**, with the main aim of depriving the estate of the late James Kamau Njuguna, of the two (2) acres it was entitled to in L.R. No. Githunguri/Kiairia/757.
  8. When the summons dated 18<sup>th</sup> July 2012 came up for hearing on 9<sup>th</sup> March 2015, the Respondents did not attend court. An affidavit of service sworn on 6<sup>th</sup> March 2015, confirmed that notice of the hearing had been served on the two Respondents. The court directed that the summons be disposed of by way of written submissions and the Applicant to serve the Respondent with both the written submissions and notice of the mention date. The Applicant filed her submissions on 7<sup>th</sup> April 2015 and duly served the Respondents as evinced by the affidavit of service dated 2<sup>nd</sup> May 2015. The Respondents did not file their submissions or appear on the mention date.
  9. In the written submissions Mr. Mwaura Shairi, counsel for the Applicant, stated that **Succession Cause No. 268 of 1995** filed in the Kiambu court should not in law have been filed, since this court had in **Succession Cause No. 957 of 1988**, issued a Grant of Letters of Administration on 23<sup>rd</sup> November 1989. Mr. Mwaura asserted that after the death of Gitau Gathuru who was the husband to 1<sup>st</sup> Respondent, she should have applied to be substituted as administrator in **Succession Cause No. 957 of 1988**, instead of petitioning afresh for another Grant of Letters of Administration.
  10. Mr. Mwaura also submitted that by the time the 1<sup>st</sup> Respondent obtained the Grant of Letters of Administration on 20<sup>th</sup> July 1995 and Certificate of Confirmation on 13<sup>th</sup> March 1996, the Applicant's husband James Kamau Njuguna was still the Administrator of the Estate of Gathuru Chutha in **High Court Succession Cause No. 957 of 1988**. Mr. Mwaura relied on the doctrine of "Res Judicata and referred this court to **High Court (Meru) Succession Cause No. 19 of 2000**. In the matter of the Estate of CEASERY MUNITHU NDAMBA (Deceased), where this issue had been canvassed.
  11. It is trite law that there cannot be in law two Grants of Letters of Administration, concerning the Estate of the same Deceased person. In such circumstances the first Grant in time remains and the second one is revoked. The Respondent was aware that her late husband Gitau Gathuru and the Applicant's husband James Kamau Njuguna were joint administrators of the Estate of Gathuru Chutha (Deceased) and that James Kamau Njuguna was a beneficiary entitled to two (2) acres out of L.R. No. Githunguri/Kiairia/757. Her action of filing a separate petition for a Grant of Letters of Administration was fraudulent and had the effect of depriving James Kamau Njuguna of his share in L.R. No. Githunguri/Kiairia/757.
  12. In the circumstances this application has merit and the court orders as follows:-
    - a. **The Grant of Letters of Administration issued on 20<sup>th</sup> July 1995, and the Certificate of Confirmation issued on 13<sup>th</sup> March 1996 in Succession Cause No. 268 of 1995, in the Principal Magistrate's Court – Kiambu is hereby revoked.**
    - b. **The Applicant and the 1<sup>st</sup> Respondent are hereby substituted as Administrators in place of their husbands, James Kamau Njuguna and Gitau Gathuru (both Deceased) respectively, in**

**High Court Succession No. 957 of 1988, to enable them prosecute the Summons for Confirmation of Grant dated 31<sup>st</sup> August 1995.**

- c. **The Land Registrar for Kiambu County is hereby directed to cancel the Title Deed issued to WANGUI GITAU in the Register in respect of L.R. No. GITHUNGURI/KIAIRIA/757.**

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 13<sup>th</sup> DAY OF July 2015.**

**L. ACHODE**

**JUDGE**