



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**SUCCESSION CAUSE NO. 2747 OF 2004**  
**IN THE MATTER OF THE ESTATE OF MUTURI GATUKU – DECEASED**  
**JUDGMENT**

1. The deceased herein died on 17<sup>th</sup> July 1997. He was survived by a widow, Edith Wanjiku Muturi, sons and daughters, a daughter in law and a grandson.
2. The widow sought representation to his estate *vide* a petition filed in court on 2<sup>nd</sup> August 2002 in **Thika CMCSO No. 244 of 2002**. A grant in that behalf was made to her on 4<sup>th</sup> November 2002. The said grant was confirmed on 3<sup>rd</sup> March 2004 where the entire estate was devolved upon the widow. A certificate of confirmation of grant was duly issued on the same date.
3. On 9<sup>th</sup> September 2004, a summons was filed at this registry seeking revocation of the grant made in **Thika CMCSO No. 244 of 2002**. It was alleged that the process to obtain the grant was defective and that the grant was confirmed before the applicants, who had filed a caveat, were informed of the filing of the confirmation application.
4. The application is filed at the instance of a Philip Mwangi Kiguta, who alleges to have had the authority of his co-applicant, a Paul Kamau Gatuku, to swear the affidavit on record on 8<sup>th</sup> September 2004. Philip Kiguta alleges to have had bought a portion of the deceased's property known as Loc.2/Kangari/1154 from the deceased, while Paul Gatuku is alleged to be a brother of the deceased who was claiming a trust in Loc.2/Kangari/1154. The deponent complains that neither he nor his co-applicant had been informed of the filing of the petition nor of the confirmation application.
5. The administrator replied to the application *vide* her affidavit sworn on 16<sup>th</sup> November 2004 and filed in court on 17<sup>th</sup> November 2004. She denies that the two applicants have any interest in Loc.2/Kangari/1154. She discloses that the two had in fact secretly filed another cause in respect of the same estate, being Nairobi **HCSC No. 717 of 1998**, which they have not prosecuted to date. She asserts that she is the only person entitled to have administration of the estate of her dead husband. She avers that Philip Kiguta has not provided proof of the purported sale transaction between him and the deceased.
6. To this reply, the first applicant Philip Kiguta swore a detailed affidavit on 15<sup>th</sup> March 2010. He explains that he bought one (1) acre out of Loc.2/Kangari/1154 from the deceased for Kshs.400,000.00 on 4<sup>th</sup> March 1993. The deceased then died before transferring the said portion to him, and the administrator, though aware of the sale refused to transfer it to the applicant. Before his demise the deceased had litigated with the applicants over the said portions in **Thika CMCSO No. 1344 of 1944**. It was in that background that Nairobi **HCSC No. 717 of 1998** was filed. It was during the pendency of **HCSC No. 171 of 1998** that the administrator filed **Thika CMCSO No. 244 of 2002**.

7. The applicant has attached several documents to his affidavit. There is a copy of the grant of letters administration intestate made on 4<sup>th</sup> November 2002 in Thika **CMCCC No. 244 of 2002** to Edith Wanjiku Muturi. A sale agreement dated 4<sup>th</sup> March 1993 between J. Mwangi Philip and Muturi Gatuku. The parties are said to have appended their signatures to the sale agreement in the presence of Karuga Wandai & Co. Advocates of Murang'a. There is also a decree issued on 22<sup>nd</sup> February 2000 in Thika CMCCC No. 1344 of 1994 on the division of Loc.2/Kangari/1154. According to the said decree the said parcel of land was to be shared out between Paul Gatuku, Mwangi Philip Kiguta, Muturi Gatuku and Judith Wanjiku Muturi in the portions of 1.6, 1.0, 0.5 and 0.2 acres respectively. There is a statement of defence filed by the deceased in **Thika CMCCC No. 1344 of 1994** where he proposed the division of the property in the terms adopted by the court in its decree of 22<sup>nd</sup> February 1994. The other notable document is certificate of confirmation of grant in Nairobi, **HCSC No. 717 of 1998**, where Loc.2/Kangari/1154 was shared out in the proportions set out in the decree of 22<sup>nd</sup> February 1994 in **Thika CMCCC No. 1344 of 1994** with Judith Wanjiku Muturi share being combined with that of her dead husband. There is also the caveat lodged on 26<sup>th</sup> August 2003 in **Thika CMCS No. 244 of 2002**.

8. Directions on the mode of disposal of the revocation application were given on the 29<sup>th</sup> September 2000, when the matter came up for hearing. The parties were to adopt their respective affidavits and to identify exhibits. Three (3) witnesses testified – Philip Mwangi Nguta, Kamau Gatuku alias Paul Kamau and Muhia Mwangi.

9. Philip Mwangi Kiguta testified that he had bought one acre out of **LR No. 1154** from the deceased. He produced a copy of the sale agreement. The deceased did not transfer the one acre to him, forcing the witness to sue him at the **Thika court in Civil Suit No. 1334 of 1991**. The said suit was brought jointly with a brother of the deceased who was himself seeking 1.6 acres out of the same parcel of land. The court ruled in their favour and awarded one acre to the witness, 0.2 acres to Edith Wanjiru, 0.5 acres to the deceased and 1.6 acres to his brother, Paul Gatuku. He did not ever transfer the property to them as he was ailing, prompting them to obtain an order that the transfer document be signed by the executive officer of the court. After the deceased passed on, the witness jointly with Paul Gatuku filed a succession cause to facilitate the fiving effect to the decree in **Thika CMCCC No. 1334 of 1991**. The grant made and the succession cause was confirmed with distribution following the pattern in the decree in **Thika CMCCC No. 1334 of 1991**. Thereafter the widow moved the court for her own grant without involving the witness.

11. Kamau Gatuku alias Paul Kamau testified as PW2. He is the brother of the deceased. His claim against the deceased was for a share of their father's inheritance. His brother had agreed to give him his share of 1.6 acres, but died before that could happen. He stated that the grant obtained by the widow was made in proceedings in which he was not involved. Muhia Mwangi was PW3. He was a neighbor to the parties to the dispute. He was a witness to the sale of the one acre to PW1, Philip Mwangi.

12. At the conclusion of the oral hearing, the court directed that the parties to file written submissions. The applicants filed their written submissions through counsel. The said submissions are dated 7<sup>th</sup> December 2010 and were filed in court on the same date. The said submissions are a summary of the background set out in the preceding paragraph of this judgment.

13. As HCSC No. 717 of 1998 had been mentioned in these proceedings, I called for it for the purpose of perusing it. The same was availed to me and I have occasion to peruse through it. The cause was filed in 1998 relating to the estate of Muturi Gatuku. It was initiated by Paul Kamau Gatuku and Mwangi Philip Kiguta, who described themselves as brothers of the deceased in the affidavit in support of the petition. They also swore that the deceased was not married. A grant of letters of administration intestate was made to them on 9<sup>th</sup> June 1998. They had the grant confirmed on 11<sup>th</sup> February 1999 when the property, Loc.2/Kangari/1104, was divided between them in the following proportions – Mwangi Philip Kiguta – 1.0 acre and Paul Kamau Gatuku – 2.3 acres. A certificate to that effect was issued on 11<sup>th</sup> February 1999.

14. The administrators were back in court on 14<sup>th</sup> June 2001 seeking rectification of the grant so as to introduce a third beneficiary, Judith Wanjiku Muturi and the sharing out of the 2.3 acres going to Paul Kamau Gatuku with her at the ratio of 1.6 acres to 0.7 acres. In his affidavit sworn on 13<sup>th</sup> June 2001 Paul Kamau Gatuku alleged that they had just discovered that the deceased had been in a relationship with the said Judith Wanjiku Muturi and the two had one child out of the said relationship. The said woman was said to have gone back to the homestead after the deceased's demise and had been accepted as a wife under Kikuyu customary law and that they had decided to provide for her. Curiously the affidavit is purported to be that of Paul Kamau Gatuku yet the same is executed by a Mwangi Philip. That notwithstanding, the application was allowed on 18<sup>th</sup> September 2001 and a duly amended certificate of confirmation of grant was issued on 18<sup>th</sup> September 2001.

15. Thereafter the administrators moved the court on 28<sup>th</sup> March 2002 by an application dated 22<sup>nd</sup> March 2002 seeking to have the Registrar of the High Court execute the relevant transfer documents for the widow of the deceased had refused to execute documents to facilitate transfer. There is an affidavit of service alleging service on the said widow on 31<sup>st</sup> May 2002. The said application is still pending. It would appear that the widow upon learning of what had been going on moved the Thika court in **CMCSC No. 244 of 2002** for representation to her husband's estate and this then stalled the proceedings in **HCSC No. 717 of 1998**.

16. The scenario before me is that following the death of Muturi Gatuku, two succession causes were filed by two different sets of persons. Grants of representation were made and have in both causes been confirmed. Both present different schemes of distribution.

17. It must be stated from the outset that there can only be one grant of representation to the estate of one individual. It is therefore untenable that there are two grants and two sets of administrators in respect of the same estate. The two causes of necessity should be consolidated and dealt with as one. After consolidation, the next matter for consideration should be whether either of the two sets of orders on confirmation of grant ought to be upheld or set aside. Both orders on confirmation cannot obviously stand together. It is either case of setting aside both or vacating one and upholding the other.

19. From the record, there is evidence that the parties litigated over the estate property, **Loc.2/Kangari/1154**, with the deceased during his lifetime in **Thika CMCC No. 1344 of 1994**. In those proceedings, the deceased acknowledged the sale of 1.0 acre out of that parcel of land to Philip Kiguta and the interest arising out of inheritance to his brother Paul Kamau, measuring 1.6 acres. The court in its decree in **Thika CMCC No. 1344 of 1994** divided the subject property in the terms proposed by the deceased. I do note that the division of this asset in the rectification ordered on 18<sup>th</sup> September 2001 followed the decree in **Thika CMCC No. 1344 of 1994**. I note also that the distribution in **CMCSC No. 244 of 2002** does not acknowledge the decree in **Thika CMCC No. 1344 of 1994**.

20. The decree made in **Thika CMCC No. 1344 of 1994** was by a court of competent jurisdiction. There is nothing on record to suggest that the said decree is no longer valid. There is no evidence that the decree had been successfully appealed against or reviewed. It is available therefore for enforcement or implementation or for giving effect. I note that it has been given effect in **HCSC No. 717 of 1998**. The estate of the deceased ought to be distributed in the manner proposed in the certificate of confirmation of grant dated 11<sup>th</sup> February 1999, as rectified on 18<sup>th</sup> September 2001.

21. After taking into account everything in this matter, I am disposed to make the following orders:-

- (a) That **Thika CMCSC No. 244 of 2001** and Nairobi **HCSC No. 717 of 1998** are hereby consolidated with **HCSC No. 2747 of 2004**;
- (b) That the operative file shall be **HCSC No. 717 of 1998**;
- (c) That the grants of letters of administration intestate made in **Thika CMCSC No. 244 of 2001** and Nairobi **HCSC No. 717 of 1998** are hereby revoked;

(d) That a fresh grant of letters of administration intestate shall issue upon Mwangi Philip Kiguta, Paul Kamau Gatuku and Edith Wanjiku Muturi out of **HCSC No. 717 of 1998**;

(e) That the orders made on 3<sup>rd</sup> March 2004 confirming the grant in **Thika CMCS No. 244 of 2002** are hereby set aside and the certificate of confirmation of grant dated 3<sup>rd</sup> March 2004 issued in that cause is hereby cancelled;

(f) That the orders made on 18<sup>th</sup> September 2001 **HCSC No. 717 of 1998** distributing the estate of the deceased between Mwangi Philip Kiguta, Paul Kamau Gatuku and Judith Wanjiku Muturi are hereby upheld and I declare that the estate of the deceased shall be distributed according to the certificate of confirmation of grant issued in **HCSC No. 717 of 1998**, dated 11<sup>th</sup> February 1999, as amended on 18<sup>th</sup> September 2001; and

(g) That this being a family jointly matter there shall be no order as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>rd</sup> DAY OF October 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Ng'ani advocate for the applicants.**