



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.795 OF 1997

IN THE MATTER OF THE ESTATE OF GITAU MUTUNGI – (DECEASED)

GEOFFREY GITAU

NG'ANG'A.....1ST APPLICANT

**JAMES KIMOTHO GITAU.....2ND
APPLICANT**

PAUL MUTUNGI

GITAU.....3RD APPLICANT

**JOHN RUGE GITAU.....4TH
APPLICANT**

VERSUS

**JOHNSON NDUNG'U GITAU
RESPONDENT**

RULING

The respondent is the administrator of the estate of Gitau Mutungi (deceased). He was issued with grant of letters of administration intestate on 24th June 1997. The grant was confirmed on 7th June 1998. From the petition, it was evident that during his life time the deceased was married to three wives. The three wives were blessed with fourteen (14) children. The respondent was granted consent by the beneficiaries of the deceased to petition the court to be granted the said letters of administration. In the schedule annexed to the confirmation of grant, the respondent distributed the properties that comprised the estate of

the deceased to the beneficiaries. The estate of the deceased appear to have been substantial.

Things were apparently alright until the 4th February 2010 when the applicants herein, who are some of the beneficiaries of the deceased, filed summons seeking the revocation of the grant that was issued to the respondent. The applicants complained that the respondent had failed, refused or neglected to distribute the estate of the deceased in accordance with the schedule which was annexed to the confirmation of grant. They accused the respondent of disposing of some of the assets that comprised the estate of the deceased for his own benefit and not for the benefits of the dependants as provided in the said schedule. The applicants are of the view that unless new administrators of the estate of the deceased are appointed by the court, the interest of the dependants would be adversely compromised. The summons is supported by the annexed affidavit of Geoffrey Ng'ang'a Gitau. He swore a further affidavit in support of the application. Hellen Wanjiru Kabue, a dependant of the deceased swore an affidavit in support of the application. James Gitau Kamotho also swore an affidavit in support of the application. The respondent swore a replying affidavit in opposition to the application. In the said affidavit, the respondent explained how, pursuant to the certificate of confirmation of grant, he had distributed the estate of the deceased to the beneficiaries. He deponed that the part of the estate of the deceased that remained undistributed was due to the fact that some of the dependants had not executed conveyancing documents in order for their respective inheritance to be transferred to them. From the said affidavit, it appears that the respondent was of the opinion that he had performed his duties as the administrator of the estate of the deceased as required by the law.

At the hearing of the petition, I heard submissions made by Mrs. Macharia for the applicants and by Mr. Kimani for the respondents. Having carefully evaluated the facts of this cause, it was clear to the court that the issue in dispute between the applicants and the respondent relates to the winding up of the estate of the deceased. From the explanation given by the respondent, it was apparent that since the confirmation of grant was issued, a substantial part of the estate of the deceased has been distributed to the dependants. However, there is a portion that has remained undistributed due to various reasons, including the fact that some of the beneficiaries have not executed conveyancing documents to enable their respective inheritances to be transferred to them. The applicants, being from a different house to that of the respondent, appear to be particularly aggrieved by this state of affairs. However, this court has not been persuaded by the argument advanced by the said applicants to the effect that the respondent failed or neglected to distribute the estate of the deceased as mandated in the certificate of confirmation of grant. There are certain issues that need resolution sooner rather than later.

It is this court's view that to enable the estate of the deceased to be wound up, it is imperative that the concerns raised by the applicants be addressed. Those concerns can only be addressed if one of the applicants is appointed to jointly administer the estate of the deceased with the respondent. The respondent shall be required to prepare a statement of accounts in relation to what he has so far done to distribute the estate of the deceased to the dependants. The respondent, with the assistance of Geoffrey Gitau Ng'ang'a (who I hereby appoint to be a joint administrator of the estate of the deceased with the respondent), shall within six (6) months from today's date endeavour to wind up the estate of the deceased. Should there be any dispute, either party shall be at liberty to apply to the court.

In the premises therefore, the grant of letters of administration intestate issued and confirmed to the respondent in this cause is hereby revoked. A new grant shall be issued in the names of Johnson Ndung'u Gitau and Geoffrey Gitau Ng'ang'a. The same is confirmed on the same terms as the previous grant. If there are any assets belonging to the estate of the deceased that have since been discovered since the grant was confirmed, then the same should be distributed in accordance with the agreement of the dependants. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF MARCH, 2011

L. KIMARU

JUDGE