



REPUBLIC OF KENYA



In re Estate of Gachii Wambugu alias Gachii Wambugu (Deceased) (Succession Cause 189 of 1999) [2025] KEHC 6910 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 189 OF 1999**

M MUYA, J

MAY 28, 2025

**IN THE MATTER OF THE ESTATE OF GACHII
WAMBUGU ALIAS GACHII WAMBUGU (DECEASED)**

BETWEEN

SIMON THOGO KARIUKI APPLICANT

AND

PATRICK MATHENGE GACHIE & 3 OTHERS RESPONDENT

RULING

1. The Summons dated 18th July, 2011 seeking the following orders:-
 - a. Spent
 - b. That there be a stay of execution of the ruling delivered by the Honourable Court on 25th January, 2010 and the resulting orders therein pending the hearing and determination of this application.
 - c. That the grant of letters of administration granted to the petitioner and Johnson Gachie on 16th December, 1999 be revoked or annulled.
2. The grounds are that are that:-
 - a. That the grant was made fraudulently by the making of a false statement or by the concealment from the court of something material to the cause.
 - b. That the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.



- c. That the person to whom the grant was made has failed to proceed diligently with the administrator of the Estate, by arbitrarily disinheriting the applicant and other family members.
 - d. That Respondent has failed to complete the administration of the Estate in respect of all matters other than continuing trust and although required by the applicant to complete.
 - e. The Respondent has failed and or refused to disclose to the court, the existence of other beneficiaries and their entitlements of shares on the Estate of the Deceased.
 - f. The applicant is beneficiary of the Estate.
 - g. That the applicant had not renounced his right to take out letter of administration nor had he been cited to either apply for grant of letters of representation and failed to do so.
 - h. That if the orders sought are not granted, the Estate of the Deceased comprised of land parcel Aguthi/Gatitu/1247 may be sold and registered in the names of third parties, hence defeat the cause of justice.
 - i. The applicant and his family live on the suit premises where he was born, which he has extensively developed.
 - j. A surveyor has been instructed by the Respondent to move into the suit land.
 - k. No prejudice will be occasioned to the Respondent if the orders sought are granted.
3. In the Replying Affidavit dated 8th November, 2011, it is deponed that:-
- a. The cause relates to the Estate of Gachii Wambugu who was their father whereas the applicant was their cousin.
 - b. When the cause was filed the applicants mother Martha Njeri Kariuki and another uncle by the name of Karumi Wambugu did file an objection.
 - c. That after Martha Kariuki's demise on 15th December, 1991, the family substituted her with Johnson Gacii Kariuki.
 - d. Johnson Gacii Kariuki was to represent his family which included the applicant.
 - e. That the cause proceeded after Johnson Gachii and the Respondent were made the administrators of the Estate.
 - f. That the applicant cannot then claim that there was concealment or fraud on grant obtained as he was part of the process through his brother whom they had chosen to represent them and now blame his brother whom they had confidence in.
 - g. That the applicant cannot state that the Estate remains not administered and yet the Estate has been transmitted and partitioned.
 - h. That the application is meant to mislead the court as the applicant's brother who should be Respondent herein is not named nor served with the same.
 - i. That the applicant's brother was given one acre which the deceased specifically gave him for having been named after him.
 - j. That the applicant is in occupation by virtual of his brother.



- k. That the applicant, his brother and another cousin have filed a civil suit against the Respondents.
 - l. That the applicant does not know what claim he intends to make.
4. Section 76 of the *Law of Succession Act* Provides:-
- “A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion.
- a. That the proceedings to obtain the grant were defective in substance.
 - b. That the grant was obtained fraudulently by the making of a false statement or by the concealment, from the court of something material to the case.
 - c. That the grant was obtained by means of untrue allegations of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance of inadvertently.

Determination

5. The contention by the applicant is that there was concealment in obtaining the grant. There is evidence to the effect that in High Court Succession Cause No. 189 of 1999 his mother, Martha Njeri Kariuki was a protestor together with Karumi Wambugu who was a brother to the Deceased. When Martha Njeri Kariuki died she was substituted with one Johnson Gachie Kariuki a brother to the applicant.
6. The applicants’ submission is that parcels no. Aguthi/Gatitu/1247 and Aguthi/Gatitu/530 originated from Aguthi/Gatitu/579 which belonged to Wambugu Mathangani (applicant’s grandfather).
7. That the said Wambugu Mathangani allocated the family of Pricilla Muthoni (applicant’s grandmother) land parcels Aguthi/Gatitu/687 and 530 which was registered in the names of Gacii Wambugu (deceased herein) to hold in Trust for himself and his three brothers who were in detention. Further that the deceased and his family never occupied Aguthi/Gatitu/1247 where the applicant resides and buried his parents. That he has developed the parcel, built a permanent house and installed water and electricity. It is also contended that the Respondent has never denied the existence of the trust.
8. The protest by Johnson Gachie Kariuki and Karumi Wambugu proceeded to hearing and judgment was delivered on 25th January, 2010 by Makhandia J (as he then was).
9. The protest was dismissed on account of there having been no evidence of a trust in existence.
10. The issue of a trust which the applicant largely relies on was litigated and determination made by Makhandia J in his judgment above mentioned. It is therefore Res Judicata.
11. The applicant has not proved that the proceedings in this cause were conducted uprocedurally.
12. There was no concealment as the applicant’s brother one Johnson Gachie Kariuki was substituted on behalf of their mother Martha Njeri Kariuki.
13. The court finds that this application does not meet the threshold of Section 76 of the *law of Succession Act*. It has no merit and it’s accordingly dismissed. This being a family matter each party to bear its own costs.

RULING READ AND DELIVERED THIS 28TH DAY OF MAY, 2025.



In presence of:-

Kebuka Wachira for the Respondent

Waruingi for the Applicant

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M. MUYA

JUDGE

