



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mbuko Mugeru (Deceased) (Succession Cause 664 of 2001)
[2023] KEHC 24363 (KLR) (Family) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 664 OF 2001

EKO OGOLA, J

SEPTEMBER 28, 2023

IN THE MATTER OF THE ESTATE OF MBUKO MUGERA (DECEASED)

BETWEEN

MAGDALENE GICHUGU MBUKO 1ST APPLICANT

FAITH WANJIRA MBUKO 2ND APPLICANT

MERCY NJOKI MBUKO 3RD APPLICANT

AND

FLORA MUKAMBA MBUKO 1ST RESPONDENT

SUSAN MUTHONI MBUKO 2ND RESPONDENT

MICHAEL MBUKO 3RD RESPONDENT

RULING

1. The Application before this Court is dated 23rd June 2022. The Applicants pray for the following:-
 - a. Spent;
 - b. Spent;
 - c. That an Order be issued to the 1st and 2nd Respondent hereby to transfer land LR Mbeti/Gachoka/996 to the Applicants and other beneficiaries as in the grant dated 29th February 2016 and in default thereof the executive officer of the court to sign all relevant documents to facilitate the transfer.
 - d. That court direct the Land Registrar Siakago to dispense with the production of the original title deed in respect of land parcel Mbeti/Gachoka/996.



- e. That costs be the cause.
2. The Application is based on the grounds set out therein and the Supporting Affidavit sworn by the 1st Applicant on even date and a further affidavit dated 23rd May 2023.
 3. To put matters into context, the deceased died intestate on 5th April 1986. He was survived by two widows that is, the 1st and 2nd Respondents, six daughters and four sons. The Applicants and the 3rd Respondent are children from the first house, their mother being the 2nd Respondent.
 4. The grant of letters of Administration was issued to the 3rd Respondent on 24th May 2001. The same was confirmed on 15th April 2002. In the schedule of assets, the 2nd respondent got Parcel No. Gatari/Githimu/3407 (measuring approximately 3 acres) (hereinafter referred to as, ‘the Gatari land’) and Old Market No. 14 (marigiti) and the 1st respondent got Mbeti/Gachoka/996 (measuring approximately 10 acres) (hereinafter referred to as, ‘the Mbeti land’).
 5. On 16th October 2002, the 1st respondent sought revocation of the confirmed grant on the grounds that she had no knowledge of the Petition. Her case was that both she and the 2nd respondent lived on the Gatari land. Therefore, it was unfair that the 2nd respondent was given the said parcel to her exclusion. She argued that she had already developed her portion of the Gatari land by building a house and planting coffee and fruits.
 6. The matter was heard on 2nd July 2014 where the parties were present in court. A consent was recorded that the Gatari land would be divided amongst the 13 beneficiaries of the estate. That is the two widows, the nine children alive at the time of confirming the grant, one Ruth Wanjira Mbuko, and one Elius Njiru Mbuko.
 7. What was left for the court to decide was on the distribution of the Mbeti land and two kiosks. The Court on 29th February 2016 delivered its Ruling stating that the Mbeti land should also be divided amongst the 13 beneficiaries. Consequently, the Certificate of Confirmed grant dated 15th April 2002 was amended.
 8. Back to the Application at hand. According to the Applicants, the 1st and 2nd Respondents have transferred the Mbeti land to themselves hence, disinheriting the other beneficiaries. Annexed to their Affidavits are copies of the Certificate of Official Search and Title deed confirming their allegations. The Applicants further deposed that the 1st and 2nd Respondents have refused to surrender the Original Title of the said property for purposes of implementing the grant. It is for these reasons that the Applicants pray for the aforementioned orders.
 9. The 1st and 2nd respondents opposed the Application vide a Replying affidavit sworn by the 1st Respondent and dated on 11th April 2023. The 1st respondent deposed that Applicants erred in law for including a property that did not belong to the deceased. According to the 1st respondent, in 2001, the property was registered to one Samuel Kagunyi R. Mukunu. Further to this, she deposed that the Applicants filed this suit without their knowledge.
 10. The 1st respondent deposed that the said Samuel was a close friend of the deceased, and before the death of the deceased, they agreed to exchange the said land with the Gatari land. She added that the deceased fulfilled his end of the agreement however, Samuel died without completing the transfer.
 11. The 1st respondent further alleged that the families of the deceased, the late Samuel and even the area chief were aware of this agreement and the registration of the property in their names. The 1st Respondent deposed that the 3rd respondent as the administrator of the deceased estate could not transfer the land to them as the land was in Samuel’s name.



Determination

12. I have considered the Application, the rival Affidavits and the entire record of the Court. It should be pointed out that even though the 1st respondent alleges that she was unaware of this suit, she appeared in person on 2nd July 2014 together with the 2nd respondent, 3rd respondent, 2nd applicant, and Ruth Mbuko.
13. There is an application on record filed by the 3rd respondent dated 25th January 2017. In his sworn affidavit, he deposed that the deceased bought the Mbeti land from the late Samuel. According to the 3rd respondent, the administrator of the estate of the late Samuel was his surviving widow Jemimah Kagunyi who was adamant about transferring the Mbeti land to the 13 beneficiaries. The 3rd respondent deposed that Jemima Kagunyi was hellbent on transferring the Mbeti land to the 1st and 2nd respondent. From the annexed green card of the Mbeti land, the said land was transferred to Jemima Kagunyi on 10th October 2017 and on 27th March 2018 the land was transferred to the 1st and 2nd respondent to be divided in equal shares.
14. This transfer to the 1st and 2nd respondents was done after the Ruling of the Court and after the Confirmation of the grant. The 1st respondent argued that the deceased wish was that all his properties were to be divided between his surviving widows. If this was so, why was there consent to having the Gaturi land be shared amongst the 13 beneficiaries? Further to this, the 1st and 2nd respondents who were well aware of this suit have not challenged the Confirmed grant. It was the 1st respondent through her application dated 16th October 2002 who moved the Court to distribute the deceased estate vide the Ruling dated 29th February 2016. This Ruling has neither been appealed nor set aside. Therefore, the 1st respondent cannot argue that she was unaware that the Mbeti land was to be shared amongst the 13 beneficiaries. The deceased wishes can only be known through either a valid written or oral will. Since the deceased died intestate, his estate can only be distributed by the court or by consent of all beneficiaries.
15. From the following, I find that the transfer of Mbeti/Gachoka/996 to the 1st and 2nd respondent on 27th March 2018 was against the Ruling of this court dated 29th February 2016. I hereby allow the Application dated 23rd June 2022 as prayed. Costs be in the cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Kemutai for the Applicants

Respondent in person

Gisiele Muthoni Court Assistant

