



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 29 OF 2013

IN THE MATTER OF THE ESTATE OF JOSEPHAT KARIUKI NGURE (DECEASED)

JANET BARABIU KARIUKI.....APPLICANT

VERSUS

DAVID IKONYA KARIUKI.....1ST RESPONDENT

GEORGE NGURE KARIUKI.....2ND RESPONDENT

ALICE WANJIRU NJUGUNA.....3RD RESPONDENT

RULING

1. The application dated 9th July 2021 by the applicant Janet Barabiu Kariuki was supported by Mary Gathoni Kariuki, Jean Wangui Kariuki, Thomas Ruhui Kariuki, Esther Njeri Kariuki, Jenipher Barabiu Kinyanjui, Susan Mumbi Kinyanjui and Grace Gathoni Kariuki, and opposed by David Ikonya Kariuki, George Ngure Kariuki and Alice Wanjiru Njuguna. It was brought under **sections 74, 83 and 84** of the **Law of Succession Act (Cap. 160)**. The applicant was aggrieved by the distribution of the estate done on 9th April 2019, following which a certificate of confirmation was issued, and the ruling of 10th May 2021 following her application under **section 74** of the **Act** for the rectification of the certificate of confirmation. In the ruling, I found that the application had sought orders that went beyond **section 74** of the **Act** that only deals with the rectification of errors in names and descriptions, or in setting out the time and place of the deceased's death. I found that the prayers had sought the redistribution of the estate of the deceased. I found that, to that extent, the application was misconceived. It was dismissed with costs.

2. The present application seeks the same and/or similar orders like those sought in the above application which was dismissed. It seeks the variation and redistribution of the estate of the deceased to the beneficiaries. For instance, Alice Wanjiru was to get 4.5 acres of LR No. 7463 to hold in trust for herself and her 4 children. It is now proposed that she gets 2.25 acres to hold in trust for herself and her 4 children. She opposes the request. The application was grounded on a survey plan by David Mwangi Gikubu that asks the parties to contribute to the internal roads. Janet Barabiu Kariuki (the applicant) is supported by Esther Njeri Kariuki, Mary Gathoni Kariuki, Janet Barabiu Kariuki, Grace Gathoni Kariuki and Susan Mumbi Kinyanjui. It was opposed by the respondents whose case was that the application went beyond what rectification under **section 74** of the **Act** allows.

3. If there was any doubt about the extent of the orders sought, one has to only look at ground (i) of the application dated 9th July 2021 which state as follows:-

“The Ruling delivered herein and the resultant Grant is incapable of being enforced as:-

- (a) It did not take into consideration the subdivision processes that had been undertaken on all that property known as Land Reference No. 7462 that had been authenticated on 1st December 1992 during the lifetime of the deceased;**
- (b) There remains a caveat registered against all that property known as Land Reference No. 7462 herein which needs to be lifted by the objector;**
- (c) The resultant plots from all that property known as Land Reference No. 7462/2, 7462/3, 7462/3 and 7462/4**

measuring 18.1 acres were transferred to George Ngure Kariuki and the remaining plot being Land Reference No. 7462/5 measuring 2/733 hectares (6.75 acres) is the only one in the name of the deceased and thus available as an asset for the distribution;

(d) The persons referred to as minors under clause 10(e) and 10(h) of the Ruling are all adults of sound mind;

(e) There is need to allow a 0.2 acre ceding of the portion allocated to the legal administrator to accommodate access to the matrimonial home, compound and family graveyard, a surrender that is consented to by the applicant who is also the beneficiary; and

(f) There is also need to cede a further 0.1260 acres to enable meaningful and reasonable road access within the immovable property the subject of the administration process being all that property known as Land Reference No. 7462 which surrender is also consented to by Mary Gathoni Kariuki, Esther Njeri Kariuki and Margaret Nduta Kariuki, the beneficiaries herein.”

4. Rectification under **section 74** of the **Act** does not include redistributing the estate left by a deceased.

5. But more important, the application is *res judicata* under **section 7** of the **Civil Procedure Rules** which provides as follows: -

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

The doctrine of *res judicata* ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title (**IEBC –v- Maina Kiai & 5 Others [2017]eKLR**).

6. In conclusion, once again, the application dated 9th July 2021 is incompetent and misconceived and is dismissed with costs.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 17TH DAY OF JANUARY 2022.

A.O. MUCHELULE

JUDGE