



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO 376 OF 1983

IN THE MATTER OF THE ESTATE OF PETER GICHERU KAGOCHO

SUSAN WAIRIMU GICHERU

MARY WANJIKU GICHERU

JANE HETA NIELSEN

MONICA WANJIRU COLLINS

LEAH NGENDO KOMU.....APPLICANTS

VERSUS

STANLEY MATHU GICHERU

MOSES MUTHIORA GICHERU

JAMES KAMAU GICHERU

STEPHEN KINORO GICHERU.....RESPONDENTS

RULING

1. Before this Court for determination are two applications as follows

(i). Summons dated **11th March 2021** by which the Applicant **MOSES MUTHIORA GICHERU** sought the following orders:-

“a. Spent.

b. THAT the Honourable court do issue an order allowing the Deputy Registrar to sign the sale agreement and transfer documents in respect of Land Reference No. 88 and 89 Section III situate in the City of Nairobi.

c. THAT this Honourable court be pleased to issue an order to allow the Deputy Registrar to sign sale and transfer documents in respect to the estate properties being RIARA RIDGE/4967/8, LIMURU/BIBIRIONI T.635, TING'ANG'A PLOT 479, TINGANGA PLOT II, KIAMBU 134 (1/2), KIAMBU MUNICIPALITY BLOCK 5/KIAMUMBI) 674, KIAMBU MUNICIPALITY BLOCK 5/KIAMUMBI) 1075, NEW PAVILLION ESTATES LIMITED 34.5 SHARES, GATATHA FARMERS CO. LTD, 49 SHARES, RIOKO ESTATE (1970) LTD, 38 SHARES, GEMA HOLDINGS LIMITED, 1 SHARE, THOME NO. 4 (1167), RUMURUTI LAIKIPIA 10 ACRES, NDUMBERI/TING'ANG'A A 339, 50 SHARES AND NDUMBERI/TING'ANG'A A/248, 50 SHARES”.

2. The Application which was premised upon **Section 47** of the **Law of Succession Act** and **Rule 73** of the **Probate and Administration Rules** was supported by the Affidavit of even date sworn by the Applicant.

(ii) Summons dated **9th April 2021** by which the Applicant **MOSES MUTHIORA GICHERU** sought the following orders:-

- a) Spent.
- b) **THAT the Honourable court do issue an order allowing the Deputy Registrar to sign the sale agreement and transfer documents in respect of Land Reference No. 88 and 89 Section III situate in the City of Nairobi.**
- c) **THAT this Honourable court be pleased to issue an order to allow the Deputy Registrar to sign sale and transfer documents in respect to the estate properties in place of Karen Wambui Gicheru being RIARA RIDGE/4967/8, LIMURU/BIBIRIONI T.635, TING'ANG'A PLOT 479, TINGANGA PLOT II, KIAMBU 134 (1/2), KIAMBU MUNICIPALITY BLOCK 5/KIAMUMBI) 1075, NEW PAVILLION ESTATES LIMITED 34.5 SHARES, GATATHA FARMERS CO. LTD, 49 SHARES, RIOKO ESTATE (3970) LTD, 38 SHARES, GEMA HOLDINGS LIMITED, 1 SHARE, THOME NO. 4 (1167), RUMURUTI LAIKIPIA 10 ACRES, NDUMBERI/TING'ANG'A A 339, 50 SHARES AND NDUMBERI/TING'ANG'A A/248, 50 SHARES".**
3. The Application which was premised upon **Section 47** of the **Law of Succession Act** and **Rule 73** of the **Probate and Administration Rules** was supported by the Affidavit of even date sworn by the Applicant.

4. Both applications were opposed by the Respondent/Co-Administrator **KAREN WAMBUI GICHERU** vide her Grounds of Opposition dated **12th May 2021**. The Applications were canvassed by way of written submissions. The Applicants filed their written submissions dated **28th October 2021** whilst the Respondent relied upon her written submissions dated **26th November 2021**.

BACKGROUND

5. This Succession Cause relates to the estate of **PETER GICHERU KAGOCHO** (hereinafter '**the Deceased**') who died intestate on **24th April 1979**. The Deceased was survived by **two (2)** widows –

(a) **SUSAN WAIRIMU GICHERU – the 1st Wife**

(b) **KAREN WAMBUI GICHERU – the 2nd wife**

6. The Deceased was also survived by several children. Following the demise of the Deceased Grant of letters of Administration Intestate was made to his two widows which Grant was duly confirmed on **8th February 1989** and later rectified on **22nd October 2012**. The Certificate of Confirmed Grant was again rectified on **10th March 2021** to include the **four (4)** Administrators, namely-

(i) **Moses Muthiora Gicheru**

(ii) **Mary Wanjiku**

(iii) **Karen Wambui Gicheru**

(iv) **James Kamau Gicheru**

7. The second House of **Karen Wambui Gicheru** apparently had no issues and proceeded to distribute amongst themselves the portion of the estate, which had been allocated to the 2nd House.

8. However the 1st House of **Susan Wairimu Gicheru** remained embroiled in a tussle on how to distribute their portion of the estate. Out of the **ten (10)** children of the 1st house **nine (9)** agreed on how to share the properties. However, the 1st son **JAMES KAMAU** has remained adamantly opposed to the mode of distribution suggested by his siblings.

9. Vide a Ruling dated **30th January 2020** **Hon Lady Justice Ali-Aroni** settled the tussle between the members of the 1st House and issued a confirmed Grant indicating the mode of distribution of the portion of the estate which had been allocated to the 1st House.

10. Thereafter, **Moses Muthiora Githeru** and **Mary Wanjiku Gicheru** who are both Administrators of the estate of the Deceased filed the two applications dated **11th March 2021** and the other dated **9th April 2021** seeking identical orders.

11. In his supporting Affidavit **Moses Muthiora Githeru** averred that he and his co-Administrator **Mary Wanjiku Gicheru** are desirous of selling of **LR No. 88 and 89 Section III** situate in the **City of Nairobi** in order to settle debts owed by the estate and to cover expenses which will arise from the distribution of the estate. He stated that **Karen Wambui Gicheru** who is his stepmother is not willing to execute documents required to facilitate the sale process.

12. The Applicants submit that **Karen Wambui Gicheru** is only a co-administrator for the purposes of distribution of the portion of the estate due to the 1st House as the share due to the 2nd House had been fully distributed that therefore neither she nor the beneficiaries from the 2nd House have any interest in any of the properties to be sold.

13. In order to move forward to conclude the distribution of the estate as per the Ruling of **30th January 2020**, the Applicants pray for orders directing the Hon Deputy Registrar to sign the documents necessary to facilitate the sale of the property and the distribution of the

estate on behalf of **Karen Wambui Gicheru** and **James Kamau Gicheru**.

Analysis and Determination

14. I have carefully considered the two applications filed by the Applicants as well as the grounds of Opposition filed by the Respondent. I note that neither **Karen Wambui Gicheru** nor **James Kamau Gicheru** filed any Replying Affidavit in opposition to the applications.

15. It is not in dispute that the delay in concluding the distribution of this estate is due to the wrangles in the 1st House. The 2nd House have no problem and have successfully distributed the portion of the estate which had been allocated to them. None of the members of the 2nd House has any interest (and none has been claimed) in the properties which were allocated to the 1st House. Therefore the 2nd House stands to suffer no prejudice if the orders sought in the two applications are granted.

16. **Moses Muthiora Gicheru** has averred that he has the authority of all his siblings save for **James Kamau Gicheru** to file these applications on their behalf. That **nine (9)** out of the **ten (10)** siblings are agreed that the properties **LR No 88** and **89** be sold for the stated purposes.

17. I am mindful of the fact that this is an extremely old matter. The Deceased died way back in **1979**. Almost forty (**40**) down the line distribution of the estate of the Deceased still has not been settled. My learned sister **Hon Lady Justice Ali-Aroni** gave clear guidance in her Ruling dated **30th January 2020** regarding the mode of distribution of the portion of the estate allocated to the 1st House. The only reason which said distribution still remains pending is the refusal by the co-administrators to co-operate with the Applicants to bring this matter to an end.

18. I have perused the Grounds of Opposition dated **12th May 2021**. In my view, the same has no merit. If as suggested the said **Karen Wambui Gicheru** and **James Kamau Gicheru** were agreeable to signing the requisite documents then why have they not done so until now? The very filing of this application has been necessitated by their refusal to co-operate with the Applicants in distributing the estate due to the 1st House. It is unfair for **Karen Wambui Gicheru** having overseen the distribution of the portion of the estate allocated to her house to effectively block the distribution of the portion of the estate due to the 1st House. In respect to **James Kamau Gicheru** it would appear that he has a strained relationship with his siblings and has adamantly refused to agree with them on the way forward. The bottom line is that the reluctance of the two Respondents has led to the warranted protraction of this case and has caused the unwarranted delays in finalizing this Succession Cause.

19. The arguments raised by the Respondents regarding the manner in which **Mr Seth Ojienda** Advocates came on record in this matter amounts to mere prevarication.

20. The firm **Ojienda & Company** came on record in this matter vide the Notice of Entry of Appearance filed on **20th July 2015**. The Respondents have not in the past **eight (8)** years taken any issue with the appearance of **Mr Ojienda** in this matter. This argument is nothing but a red herring raised in an attempt to divert the courts attention from the lapses and failures of the Respondents as co-administrator. The Respondents do not hold brief for the firm of **Mr Njenga & Co. Advocates** and have no authority to demand payments of legal fees on behalf of said firm.

21. The powers and duties of personal representatives and/or Administrators are set out in **Sections 82 and 83 of the Law of Succession Act Cap 160, Laws of Kenya**. An Administrator is in a fiduciary position with regard to the estate of a Deceased person and is at all times required to act in the best interest of the estate.

22. Since the Ruling delivered on **30th January 2020** neither **Karen Wambui Gicheru** nor **James Kamau Gicheru** have sought audience in court to explain any difficulty they may be experiencing with complying with the courts direction on distribution of the estate. Instead, the two opted to sabotage the courts orders by declining to sign the documents required to facilitate transmission of the estate to the rightful beneficiaries from the 1st House

23. Finally, I find merit in the two applications. I direct that **Karen Wambui Gicheru** and **James Kamau Gicheru** sign the requisite documentation to transfer the portion of the estate due to the 1st House **subject** to a written consent being filed in court to sign the sale and transfer documents for **LR Nos 88** and **89 Section III City of Nairobi**. The documents to be signed within **twenty-one (21)** days failing which the **Hon Deputy Registrar** is authorized to sign the said documents on behalf of the Respondents. No orders on costs.

DATED IN NAIROBI THIS 25TH DAY OF MARCH 2022.

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MAUREEN A. ODERO

JUDGE