



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1091 OF 2012**

**IN THE MATTER OF THE ESTATE OF HANNAH WANJIRU WANJAU (DECEASED)**

**LEONARD KARUGA KOINANGE.....APPLICANT**

**VERSUS**

**PAULINE WAITHIRA MBURU.....1<sup>ST</sup> RESPONDENT**

**PETER MBURU KAMAU.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Hannah Wanjiru Wanjau died testate on 26<sup>th</sup> November 2011 at Kiambu District Hospital. She left a Will dated 7<sup>th</sup> April 2006 and whose executor was the applicant Leonard Karuga Koinange. In the Will it was indicated that she owned 1.5 acres in LR No. Githunguri/ Githiga/12 together with the developments thereon which she bequeathed to Wilfred Kirumba Njenga. The grant of probate was issued to the applicant on 19<sup>th</sup> November 2012, and was confirmed on 24<sup>th</sup> January 2014.

2. The applicant has applied (in the application dated 21<sup>st</sup> August 2015) under **rules 72 and 73** of the **Probate and Administration Rules** for an order directed at the Kiambu District Lands Registrar to remove the caution lodged against LR Githunguri/Githiga/12 by the respondents Pauline Waithira Mburu and Peter Mburu Kamau in December 2011 and for the Kiambu District Surveyor to hive off 1.5 acres of the parcel to allow the registration of the same in the name of the beneficiary Wilfred Kirumba Njenga.

3. The applicant's case was that the deceased owned 1.5 acres of the parcel which in the Will he bequeathed to Wilfred Kirumba Njenga, that as the executor and administrator of the estate of the deceased he was required to make sure that the estate goes to the beneficiary; however, the respondents had placed a caution on the parcel claiming they owned it; that the 1<sup>st</sup> respondent had through her husband peter Mburu Kamau (2<sup>nd</sup> respondent) unsuccessfully claimed the parcel in Nairobi **ELC No. 1153 of 2007**; and that it had become necessary for him to present the present application for the orders therein.

4. The 1<sup>st</sup> respondent filed a replying affidavit to say that the court had no jurisdiction to hear and determine the application. This was because they were in occupation of the parcel which they considered to be theirs and therefore this was a dispute over the ownership of the parcel which this Probate and Administration Court could not hear and determine; and that the dispute belonged to the Environment and Land Court.

5. The applicant was represented by Mr. Thuo and respondents by Mr. Baiya.

6. The respondents had an opportunity to challenge the Will left by the deceased to say that she could not bequeath their parcel of land. They had opportunity to join the succession cause and seek the revocation of the grant. The law allows the respondent to sue the administrator of the estate of the deceased over the parcel. As things stand, it would appear, they unsuccessfully sued over the land. They may be having an appeal against the ELC Cause, but they do not have a stay.

7. In my view, the application and the response do not raise a dispute over the land subject of the certificate of confirmation. The issue at hand is whether, after the court has confirmed the grant in which the parcel has been determined to go to the beneficiary, the applicant as the administrator of the estate of the deceased cannot come back to this court to have the orders in the certificate of confirmation executed to allow the beneficiary get his request!

8. I determine that the application has merits and I allow it with costs.

**DATED and DELIVERED NAIROBI this 15<sup>TH</sup> day of FEBRUARY 2021.**

**A.O. MUCHELULE**

**JUDGE**