



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1178 OF 2017
IN THE MATTER OF THE ESTATE OF SAMUEL NJENGA MACHUA
ALIAS SAMUEL NJENGA MACUA (DECEASED)

AMON GITHAE NENE.....APPLICANT

VERSUS

EDITH WAMAITHA MUTHERU.....1ST RESPONDENT

CATHERINE WANGARI MWANGI.....2ND RESPONDENT

RULING

1. The deceased Samuel Njenga Machua alias Samuel Njenga Macua died intestate on 17th May 2016. He was survived by two widows, Edith Wamaitha Muthuru (1st respondent) and Catherine Wangari Mwangi (2nd respondent) and seven children. His estate comprised:-

- (a) death gratuity at Nairobi City Water and Sewerage Company;
- (b) plot No. Dagoretti/Waithaka/1385; and
- (c) plot No. Dagoretti/Waithaka/1392.

2. On 8th January 2018 the grant of letters of administration intestate was issued to the 2nd respondent and daughter Penina Wangui Wangari. It was confirmed on 11th June 2018. On the application of the 1st respondent, the grant was revoked on 21st June 2019 and fresh joint summons issued to the respondents. The fresh grant was confirmed on 28th November 2019. The 1st respondent was given plot No. Dagoretti/Waithaka/1385 to hold in trust for herself and her children Daniel Kamau, Salome Wambui, Keziah Wanjiru and Veronica Nyawira. The 2nd respondent was given plot No. Dagoretti/Waithaka/ 1392 to hold in trust for herself and for her children Penina Wangui Wangari, Kevin Machua and Diana Wambui. Each widow was to get 50% of the death gratuity to hold in trust for herself and her children.

3. The applicant Amon Githae Nene filed this application dated 22nd October 2020 seeking the revocation of the grant to the respondents on the basis that he had a buyer's interest in Dagoretti/Waithaka/1385 which the respondents had not disclosed to the court. His case was that he had on 3rd March 2010 entered into agreement to buy Dagoretti/Waithaka/1385 from the deceased at Kshs.570,000/=. The agreement had stipulated that he pays Kshs.400,000/= (which he paid) and the balance of Kshs.170,000/= on transfer. They had obtained the consent of the Land Control Board, but the transfer had not gone through. The applicant swore that the grant and certificate of confirmation were based on untrue allegation of fact that the parcel of land solely belonged to the deceased, yet he had bought it from him. The application was served but did not elicit any response from the respondents.

4. It was not deponed that the respondents knew about the sale agreement between the deceased and the applicant over Dagoretti/Waithaka/1385, or at all. The respondents cannot be said to have known about the transaction and did not let the court know it existed. There was therefore no fraud or non-disclosure that can be attributed to them.

5. Secondly, it was not deponed that the applicant had taken possession of the land. If he was in possession then knowledge on the part of the respondents could have been inferred.

6. The sale transaction had not been completed by the time the deceased died. Transfer had not been done and full purchase price had not been paid. Further, the Land Control Board consent was on 24th August 2010. The deceased died about six years later. There is no explanation why the agreement was not enforced during the deceased's lifetime. The applicant was guilty of laches.

7. I find that the estate of the deceased owes the applicant Kshs.400,000/= that was paid in the agreement. The applicant can sue the respondents to recover the money.

8. The result is that the application has no merit and is dismissed. The application was not defended. I do not order costs.

DATED and DELIVERED NAIROBI this 15TH day of FEBRUARY 2021.

A.O. MUCHELULE

JUDGE