



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION NO. 384 OF 1984

IN THE MATTER OF THE ESTATE OF KIMAMU KAHUNGU

POLLY NYAMBURA KAHUNGU.....APPLICANT

VERSUS

JOAN ANITA WAMBUI1ST RESPONDENT

PATRICIA NYAMBURA NJOROGE.....2ND RESPONDENT

RULING

1. Kimamu Kahungu died on 28.6.81. A grant of letters of administration (the Grant) was issued to Geoffrey Ngugi Kahungu (Geoffrey), a son of the deceased. The Grant was confirmed on 3.12.84. Geoffrey thereafter subdivided Parcel No. Dagoretti/Uthiru/504 (Plot 504) and sold some portions, namely Plots Dagoretti/Uthiru/1051 and 1052. He procured registration of Parcel No. Dagoretti/Uthiru/1053 (Plot 1053) in his name. Polly Nyambura Kahungu (Polly), a daughter of the deceased, resides on Plot 1053 with her children and has always resided there. Geoffrey did not involve Polly in the succession proceedings and had told the Court that the deceased was survived only by himself. Polly successfully applied for the revocation of the Grant on grounds that it was obtained fraudulently by Geoffrey, who failed to disclose to the Court that he had a sister who survived the deceased and made a false statement, *to wit* that he was the only survivor of the deceased.

2. In its ruling of 11.12.15, the Court did revoke the Grant and then appointed Polly and Lois Nyambura Ngugi (Lois), Geoffrey's widow as administrators of the deceased's estate. (Geoffrey died on 11.3.08). The Court further directed that the title in respect of Plot 504 be cancelled and revert to the deceased and that the same be shared equally by Polly and Lois.

3. Following the demise of Lois on 9.2.17 the Court issued a fresh grant to Polly and the Respondents, Joan Anita Wambui and Patricia Nyambura Njoroge as administrators. Joan and Patricia are Lois' daughter in law and granddaughter respectively.

4. In the present Summons dated 30.6.2020, Polly seeks a review of the orders of 11.12.15 so that the order of equal distribution of the property of the estate between Polly and Lois be achieved. Because Plots 1051 and 1052 were sold by Geoffrey to third parties, Polly sought that Plot 1053 be subdivided as proposed in the exhibited survey report dated 25.5.2020, so that she takes the equivalent of the half share of Plot 504 that she would have been entitled to, had the said 2 plots not been sold by Geoffrey.

5. Patricia filed a replying affidavit sworn on 23.7 2020 in opposition to the Application. It is her case that the Court in its ruling of 11.12.15 did not revoke the titles to Plot 1051 and 1052 and only mentioned Plot 1053. From the exhibited Survey report, Plot 504 measured 1.03 ha. Plot 504 was subdivided into 3 plots Nos 1051 and 1052 measuring 0.1 ha each and Plot 1053 measuring 0.7380 ha. Patricia averred that Polly in her application dated 25.7.18 had agreed to forego any interest in the 2 plots. She further stated that in spite of being aware of the subdivision of Plot 504 by Geoffrey, Polly failed to make her interest known to him. Patricia's belief is that the Court on 11.12.15 ordered that Polly and Lois share Plot 1053 equally. It would therefore be unfair for the acreage to be subdivided is 0.99 ha and not 0.712 ha while 0.2 ha is with third parties. Patricia's wish is that all family members who reside on the land should be consulted and a mutually acceptable surveyor be engaged.

6. I have considered the Summons and the rival affidavits. It is not disputed that Geoffrey sold Plots 1053 and 1052 to third parties before his demise. He benefitted from the sale of the plots to the exclusion of Polly. The Court after finding that Geoffrey had fraudulently obtained the grant and confirmation cancelled the title to Plot 504, and not Plot 1053 as Patricia would want have this Court believe. The Court further directed that Plot 504 be distributed to Polly and Lois, the widow of Geoffrey in equal shares. The orders of the Court are quite clear and need no elaborate interpretation. Both Polly and Geoffrey being children of the deceased were entitled to the estate of the deceased in equal shares. Geoffrey has benefitted from 0.2 ha of Plot 504 by selling Plots 1051 and 1052. Polly should not be denied her entitlement, which the Court in its order of 11.12.15 affirmed. Given that 0.2 ha of Plot 504 is in the hands of third parties, Polly can only get her entitlement from

the available parcel of land being Plot 1053.

7. In the premises, I allow the Summons dated 30.6.2020 in the following terms:

i. Polly Nyambura Kahungu is entitled to the equivalent of half of Plot Dagoretti/Uthiru/504.

ii. Given that Dagoretti/Uthiru/504 is no longer in existence having been subdivided, and portions sold out, Polly shall get her entitlement from Plot Dagoretti/Uthiru/1053, the remaining portion.

iii. A government surveyor shall subdivide Plot Dagoretti/Uthiru/1053 to give effect to Polly Nyambura Kahungu's entitlement as indicated in i) and ii) above, ensuring as far as possible that the parties and their families remain on the portions they currently occupy, and noting not to interfere with permanent buildings and graves on the parcel of land.

iv. This being a family matter, each party shall bear own costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 23RD DAY OF APRIL 2021

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **for the Respondents**

..... **Court Assistant**