

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2495 OF 2014

IN THE MATTER OF THE ESTATE OF TERESIA WAMBUI WAIREGI (DECEASED)

RULING

1. The Application coming for consideration in this Ruling is the one dated 31.7.2018 seeking the following orders.

(i) THAT the Property in RUIRU/RUIRU EAST BLOCK 2/5277 was mischievously and erroneously included in the Certificate of Confirmation of grant whereas it belongs to the applicant.

(ii) THAT the Applicant and the deceased have had a long standing suit over the property in ELC No. 405 of 2017 at Thika, (formerly ELC No. 2261 of 2007 at Nairobi).

(iii) THAT the said suit is slated for defence hearing on the 3rd and 10th of October 2018 before which date the Applicant seeks to have summons for revocation heard and determined, as the outcome of the said suit will certainly be rendered nugatory.

2. The Application is supported by Affidavit of MAINA MWAURA dated 31/7/2018 in which he stated that the Respondent did not disclose that Land Parcel LR RUIRU/RUIRU EAST BLOCK 2/5277 was purchased by the Applicant but it was erroneously transferred to the deceased and further that the same is the subject of Thika ELC Case No. 405 of 2017 formerly Nairobi ELC No. 2261 of 2007.

3. The Administrator of the Estate of the Deceased swore a Replying Affidavit dated 15.10.2018 stating the said parcel was gifted to the Deceased by the late Njoki Macharia.

4. The parties filed written submission in the Application dated 31.7.2018. I find that it is not in dispute that there is a suit pending before the ELC Court on the ownership of the suit property.

5. It is the jurisdiction of the ELC to deal with land claims as per **section 13** of the Land and Environment Court Act which states as follows:

"The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land."

6. The suit property should accordingly be excluded from the Certificate of Confirmation pending the determination of the dispute.

7. I find that the right forum for the parties to ventilate their dispute is the ELC Court which is by law mandated to hear all disputes relating to ownership and occupation of land.

8. I accordingly allow the application dated 31.7.2019 and direct that the Respondent files a Summons for rectification to remove the suit property from the list of assets belonging to the Estate of the deceased until the suit pending before the ELC Division is heard and determined.

9. Each party to bear its own costs of the application dated 31.7.2018.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 24TH DAY OF JANUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.