



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 588 OF 1996

IN THE MATTER OF THE ESTATE OF PENINAH NJERI (DECEASED)

RULING

BACKGROUND

1. **Peninah Njeri Muthoira** hereinafter referred to as the deceased died on the 15th June 1994. On the 13th March 1996 **Dishon Muchene Muthoira** petitioned for a letters of administration intestate for the estate of the deceased. In his affidavit in support of the said petition he averred that the deceased died intestate and left behind a son **Dishon Muchene Muthoira**-son (**Dishon**)and **Elizabeth Wanjiku Njuguna**-daughter(**Elizabeth**). The only asset listed in the said affidavit is land parcel title no. **Dagoretti/Riruta/1837 of 0.49 hectares (parcel 1837)**. The deceased had no liabilities. Elizabeth gave her consent to Dishon in an affidavit dated the 29th February 1996.
2. On the 21st January 1997 Dishon filed an affidavit that the deceased left a plot Dagoretti/Riruta/1837 sized 0.49, Dishon was to get 0.36 acres and Elizabeth was to get 0.13 acres.
3. On the 11th June 1996 a grant of letter of administration intestate was issued to Dishon Muchene Muthoira. A certificate of confirmation of a grant was issued to Dishon on the 18th April 1997, plot Dagoretti/Riruta/1837 was shared as follows; Dishon-0.36 acres and Elizabeth 0.13 acres.
4. On the 18th January 1999 an application was filed by **Samuel Kahara Gage (Samuel)**. Samuel sought to have an injunction issued against the respondents to stop them from demolishing a toilet built on parcel no. 1837(the parcel).
5. On the **18th February 1998** Samuel filed an application seeking revocation of the grant issued to Dishon the 11th June 1996 and confirmed on the 18th April 1997. He averred in his affidavit in support of the application that Dishon had obtained the grant fraudulently by concealment from the court material facts by failing to disclose that the deceased had seven children including the petitioner and Elizabeth. The other children are **Samuel Kahara Gage-son, Francis Mbugua Gage-son, Rahab Mugure Kirui- (widow of the later Peter Kirui Muthoira son of the deceased), Dishon Muchene Muthoira-son, Elizabeth Wanjiku Njuguna-daughter, Serah Wanjiru Mbugua-daughter and Esther Nyokabi-daughter**. According to Samuel Dishon lied when he filed the petition that the deceased was survived by only 2 children who were entitled to the parcel 1837, thus disinheriting the other five beneficiaries. On the **23rd May 1999** a grant of letter of administration was issued to **Dishon** and **Samuel**.
6. On the 16th November 1999 a summons to confirm the grant dated the 13th October 1999 was filed by seeking to have the grant confirmed. Dishon filed an affidavit dated the 13th October 1999. He avers that parcel no. 1837 the suit premises was carved out of the original land no. Dagoretti/ Riruta/165 that was owned by their late father Gathuna Muthoira which was subdivided sometimes in 1970 amongst themselves as sons of their late father each getting 3.5acres, whereas their late mother Penina Njeri Muthoira was allocated one acre which is the suit premises. That at the time the subdivision was being done Elizabeth was married to one Njuguna until 1980 when the said marriage ceased to exist and she returned to their parents' home with her five children and settled on the portion owned by their late mother. Elizabeth was given the full use of the said land. That it was agreed between them as siblings that the said portion of land would be given to Elizabeth together with her children as she had no place to settle. That at the time the deceased died Elizabeth was her only dependant. But after the death of their mother Samuel refused to recognise Elizabeth's inheritance and attempted to kick her out of the said parcel of land.
7. The parties have had several applications from 1999.
8. On the 16th June 2015 the **James Muthoria Muchene** filed the application dated the 15th June 2015. The applicant seeks the following orders;
 - i. The grant issued to the petitioners on the 14th July 2003 be revoked.
 - ii. That the petitioners do account for the estate since the date of issuance of grant to date.

iii. That the petitioner/respondents be restrained and or enjoined from interfering with the portion of the estate of the deceased Dishon Muchene Muthiora measuring 0.35HA. herein in any manner whatsoever until the hearing and determination of the application for revocation

iv. That the costs be in the cause.

The application is supported by the affidavit of **James Muthoira Muchene** the applicant and an administration. According to the applicant the succession cause was done fraudulently and or secretly as we were they were not informed. That they are entitled to inherit the parcel of land Dagoretti/Riruta/1837 as the petitioner Elizabeth was to hold the land in trust and not as joint owners being ancestral land. That he was not consulted at the time the succession cause was filed. That they are entitled to inherit from the said land as the parcel of land belonged to their deceased father. That the other beneficiaries stand to suffer prejudice if the application is not allowed. That the grant was fraudulently obtained and the petitioners should be restrained from carrying out any transactions to the estate of the deceased. That the petitioner and the deceased had agreed on the mode of distribution only for the petitioner to change her mind upon his death as per the application for partition and mutation form- "JMM3" That they do not have the petitioner getting her share as agreed with the deceased in terms of the mutation documents.

9. Elizabeth filed an affidavit in response dated the 6th July 2015. In the said affidavit she states that the grant was issued to Dishon and Samuel her brothers and not her. That the summons to revoke the grant cannot be entertained as the same of dealt with by Justice Waweru after the parties were heard in court. That Justice Waweru held that Elizabeth Wanjiku Muthoni was the only person beneficially entitled to the deceased's estate. That Elizabeth was to inherit absolutely the only asset comprising the estate L.R. Dagoretti/Riruta/1837. That there was no appeal from the said decision. That she knows that Rahab Mugure Kirui lodged a caution against title and was ordered by the court in Civil case no. 165 of 2009(O.S) to remove the caution. That since the matter was handled by Justice Waweru this court has cannot grant the orders and the application.

10. On the **14th April 2015** Elizabeth Wanjiku filed an application seeking to have the names of the 2 administrators Dishon Muchene Muthiora and Samuel Kahara Gage removed and be substituted with the name of the applicant as they were deceased. This application is pending for determination. The applicants **James Muthiora and Jane Muchene** filed an application dated **17th September 2015** seeking to leave to be substituted in the proceeding instead of **Dishon Muthiora** who is deceased. On the 12/10/2016 this court granted the said application, Elizabeth had no objection. On the said date the court gave directions that the application dated the 15/7/2015 be canvassed by way of viva voce evidence. Before this direction I tried to understand why the matter was back in court and so decided to hear the parties. Another application was filed by James Muthiora dated the **11/10/2016** seeking that there be a stay of execution of the orders of Hon. Justice H.P.G Waweru made on the 14th July 2003, he also sought that the said orders be set aside or reviewed. This application was withdrawn by the applicant on the **11/10/2016**. On the **9th November 2016** James Muthiora filed an originating summons seeking to restrain Elizabeth from dealing, interfering, alienating or otherwise disposing off L.R. No. Dagoretti/Riruta/1837. On the 14/3/2017 an application was filed by a proposed interested party seeking to be enjoined to the matter and seeking orders that an order for security of costs for Kshs. 3,562,041/- be issued to the proposed interested party by one James Muthiora Muchene the administrator of the estate of the deceased of Dishon Muchene Muthiora. The applicant is Doctor Antony Gitau Ndonga who claims to be the registered proprietor of parcel land no. Dagoretti/Riruta/1837 as per the ruling delivered by Hon. Judge Waweru on the 14th July 2003. This application dated the 14/3/2017 has not been heard.

11. Parties testified in court adducing evidence on who should inherit the land parcel the subject of the application.

12. The objector filed written submissions on the 16th November 2018 for the application dated the 15th June 2015. I have considered the evidence and the submissions. The applicant seeks to revoke the grant that was issued by Justice Waweru on the 14/7 2003. From a perusal of the proceedings the said ruling delivered after a considering the parties submissions. It is apparent there was no appeal from the date ruling. What am being asked to determine as regard parcel no. Dagoretti/ Riruta/ 165 on the portion 0.49 Ha was determined by Justice Waweru. According to the said ruling Elizabeth was the owner of the portion 0.49 Ha. This was not and has not been challenged by way of appeal. If the applicants were dissatisfied with the said ruling they ought to have appealed and not sought another revocation of the grant which was confirmed. I have no jurisdiction to sit on appeal on the orders of Justice Waweru. It has not been demonstrated that the proceedings before Justice Waweru were defective for another application to be filed and parties to be heard again. I agree with the submissions made that the issues the applicant is making now should have been made at the time Justice Waweru heard the matter. All in all I find that the application dated the 16th July 2015 lacks merit and is dismissed. Each party to bear its own costs. The parties shall take a mention date before the presiding judge family for directions on any pending applications within 14 days from the date of this Ruling.

Dated, signed and delivered at Nairobi this 23rd day of January 2020.

R.E. OUGO

JUDGE

In the presence of;

Counsel for the Applicant	Absent
James Muthoira	Present
Elizabeth Wanjiku	Present
Mr. Mugu	For Elizabeth Wanjiku

For the Respondent

Ms Charity

Court clerk