



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 1506 OF 1997**

**IN THE MATTER OF THE ESTATE OF GEORGE RAGUI KARANJA (DECEASED)**

LINCOLN KIMWAKI RAGUI.....1<sup>ST</sup> APPLICANT

GEORGE RAGUI KARANJA.....2<sup>ND</sup> APPLICANT

VERSUS

KOIGI WA WAMWERE.....1<sup>ST</sup> RESPONDENT

NELLY WANJIKU KURIA.....2<sup>ND</sup> RESPONDENT

GODFREY MBUURI GACHURA.....INTENDED INTERESTED PARTY

**RULING**

1. There are several applications pending in this matter. Subject of this ruling is an amended Notice of Motion dated 27<sup>th</sup> May, 2019 which seeks for three substantive prayers to wit;

- **The applicant Godfrey Mbuuri Gachura be enjoined to the proceedings.**
- **That once enjoined the said Godfrey Mbuuri Gachura be allowed to respond to the application dated 30<sup>th</sup> November 2018 by Lincoln Kimwaki Ragui and George Ragui Karanja.**
- **Thirdly, that the court do order that one acre of land be excised from the portion of Title No. Dagoretti/Uthiru/146 allocated to the family of Edward Karanja Ragui vide the Certificate of Confirmation of Grant dated the 27<sup>th</sup> of May 1999.**

2. In the affidavit in support the applicant avers that he entered into a sale agreement with one Margaret Wanjiru Ragui to purchase an acre of **Title No. Dagoretti/Uthiru/146** for the sum of Kshs.50,000,000/= and had already paid Kshs.13,000,000/=. He annexed a sale agreement dated 23<sup>rd</sup> December 2016.

3. In an affidavit dated 2<sup>nd</sup> October, 2019, Margaret Wanjiru Ragui confirms that she indeed entered into a sale agreement with the applicant for the sale of a portion of land that had been allocated to her deceased husband. It is her contention that she entered into the agreement during the validity of the first Confirmed Grant of 27<sup>th</sup> May 1999. She further expressed her desire to meet her side of the bargain as her conduct was honest, innocent and appropriate.

4. The Respondents on their part filed grounds of opposition to the application as follows:

- There is no beneficiary of the Estate subject of these proceeding known as Margaret Wanjiru Ragui and hence both the applicant and named seller Margaret Wanjiru Ragui are strangers.
- The Application is defective as it is brought under the Civil Procedure Rules as opposed to Probate and Administration Rules.
- The application dated 30<sup>th</sup> November 2018 cannot be opened by a stranger after oral and written submissions have been

concluded.

- The Claim if any between the seller and buyer can be pursued in the Environment and Land Court.
- At the sight visit there was no disclosure of the alleged sale.
- The sale agreement annexed is a fraud and an attempt to circumvent the decision of the court.
- This court cannot interfere with the final amended Certificate of Confirmation of Grant issued on the 5<sup>th</sup> of May 2017 by a court of concurrent jurisdiction.
- The application lacks merit and ought to be dismissed.

5. From the onset this court will not be concerned with the procedural technicalities raised. This matter is fairly emotive, other than the intended interested party it involves family members and therefore there is need to administer substantive justice without undue regard to technicalities.

6. It is also important for the court to consider the background to this matter, which has been heard by other judges before to appreciate the peculiar circumstances herein as it arrives at its determination of this application.

7. The deceased herein George Ragui Karanja died intestate on the 15<sup>th</sup> of August, 1996, 23 years ago. His widow Grace Waithira and son Edward Karanja petitioned for grant of representation on the 23<sup>rd</sup> of July 1997. A grant was issued to the two on the 23<sup>rd</sup> of September, 1997.

8. The deceased left behind the following survivors:

**i. Grace Waithira - wife**

**ii. Edward Karanja - son**

**iii. Mary Waboro – daughter**

**iv. Wangari Ragui – daughter**

**v. Nduta Koigi – daughter**

**vi. Edwin Muchene – son**

**vii. Lincoln Kimwaki – son**

**viii. Nduta Wanjohi – daughter**

**ix. Nduta Ragui – daughter**

He left several assets and no liabilities.

9. The grant was confirmed on the 27<sup>th</sup> of May, 1999 and assets distributed to:

Grace Waithira

Edwin Muchene

Lincoln Kimwaki

Mary Waboro

Wangari Ragui, and

Wambui Ragui

10. The administrators Grace Waithira and Edward Karanja died on 26<sup>th</sup> June 2008 and 15<sup>th</sup> January, 2012 respectively. They were since replaced by Koigi Wa Wamwere, Lincoln Kimwaki, George Ragui and Nelly Wanjiku Kuria in a Grant of Representation issued on 5<sup>th</sup> February 2016.

11. In an application dated 17<sup>th</sup> March 2016 Nelly Wanjiku Kuria and Koigi Wa Wamwere described as 1<sup>st</sup> and 3<sup>rd</sup> administrators sought to have the new Grant rectified to include names of the new set of administrators and for review of the distribution of the untransferred assets of the deceased so that the same may be equally shared amongst the deceased children a departure from the earlier distribution.

12. The application was mainly predicated on the grounds that 7 daughters of the deceased namely Nelly Wanjiku Kuria, Emily Wairimu Ngugi, Jane Nduta Koigi, Pauline Nduta Muthere, Mary Waboro Aruna, Frashia Manyara and Rachael Wambui were erroneously left out in the distribution of family land Dagoretti/Uthiru/146 (9.17 acres) yet they were entitled to equal shares; the widow had contrary to Section 35 of the Law of Succession Act been allocated absolutely 3 prime properties and although she left a will, its executor was unable to transmit the properties in accordance with the her wishes.

13. George Ragui and Lincoln Kimwaki co-administrators herein opposed the application.

14. In a ruling dated 3<sup>rd</sup> May 2017 Musyoka J allowed the application for review so as to allow equitable distribution. He further directed that the review should take into account the situation on the ground in terms of occupation, possession and developments (emphasize added).

15. None of the parties preferred and appeal. The parties sought a clarification and the judge in a ruling offered the same. However by an application dated 30<sup>th</sup> November, 2018 Lincoln Kimwaki Ragui and George Ragui Karanja on their part sought to stay the orders issued of 3<sup>rd</sup> May 2017 and 9<sup>th</sup> July 2018 respectively and to review, rectify and/or set aside the orders issued on 3<sup>rd</sup> May 2017 authorising redistribution of the deceased estate to exclude developed and occupied areas by beneficiaries pursuant to the Certificate of confirmation of Grant issued on 27<sup>th</sup> May 1999 and the court to apportion the portions that were to go to Grace Waithira as per her will and provide for a grave yard.

16. The above application was heard and submissions made and is pending ruling; it was stayed pending hearing and determination of the application subject matter.

17. It is also to be noted that the claim being made by the applicant is against Margaret wife of Edward Ragui(deceased) and not the estate herein. Secondly, the applicant acknowledged in the sale agreement that the land belongs to this estate and was yet to be transferred to the estate of Edward Ragui.

18. Margaret Ragui acknowledges receipt of monies from the Applicant, although it is not clear to the court whether the said Margaret is the administrator of the Estate of Edward Ragui, that as it may, my considered view is that the application is misplaced and premature. The applicant ought to await the final decision as regards this estate and thereafter pursue the family that sold him land and seek whatever recourse from them. Edward Ragui's family is well represented indeed one of the co-administrators is a son of Margaret and Edward Ragui and can articulate their interest.

19. The Application is therefore dismissed with costs.

**Dated and Delivered in Nairobi on this 23<sup>RD</sup> day of JANUARY, 2020.**

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**ALI-ARONI**

**JUDGE**