



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1518 OF 2000

IN THE MATTER OF THE ESTATE OF JOHN GITAU MUCHUNU (DECEASED)

JOYCE WAIRIMU KIHUGU.....1ST APPLICANT

CHRISTINE WANJA MUHINJA.....2ND APPLICANT

HOTTENSSIAH WAITHIRA IRARI.....3RD APPLICANT

FLORENCE NDUTA KABOGO.....4TH APPLICANT

HELLEN WAMBUI WAIRAGU.....5TH APPLICANT

JUSTINE WAIRIMU NDUNGI.....6TH APPLICANT

VERSUS

NOAH KIMANI GITAU..... RESPONDENT

RULING

1. The deceased John Gitau Muchunu died intestate on 23rd April 2000. He was survived by two widows, Susan Njeri Gitau (now deceased) and Hannah Njeri Gitau. Each had children. Hannah Njeri Gitau and Noah Kimani Gitau (the respondent who is from the house of Susan Njeri Gitau) petitioned for the grant of letters of administration. They were issued with the grant on 7th November 2000. The grant was confirmed on 3rd June 2002.

2. The deceased left land parcels Dagoretti/Ruthimitu/93 measuring 0.99 acres, Dagoretti/Ruthimitu/369 measuring 4.7 acres and Dagoretti/Ruthimitu/383 measuring 2.5 acres. In the certificate of confirmation Dagoretti/Ruthimitu/93 and Dagoretti/Ruthimitu/369 were ordered to be registered in the joint names of Susan Njeri Gitau and the respondent, with the former having a life interest, and Dagoretti/Ruthimitu/383 was registered in the joint names of Hannah Njeri Gitau and her children Rose Mwihaki Gitau, Irene Wairimu Gitau, Caroline Waithira Gitau, James Mungai Gitau and John Kimani Gitau.

3. This dispute is about the house of Susan Njeri Gitau whose members are the respondent, his sisters Joyce Wairimu Kihugu (1st applicant), Christine Wanja Muhinja (2nd applicant), Hottensiah Waithira Irari (3rd applicant) Florence Nduta Kabogo (4th applicant), Hellen Wambui Wairagu (5th applicant) and Justine Wairimu Ndungi (6th applicant – who is the widow of his late brother Stephen Ndungi). Susan Njeri Gitau died on 25th November 2005. Following the death, the respondent got the two parcels to be registered in his name. He subdivided the parcels and begun to sell the portions. This is when the applicants on 1st April 2016 filed the present application to revoke the grant. Their complaint that they did not participate in the petition for grant and the confirmation of that grant cannot be true. This is because at each of those stages they appended their signatures. However, they state that the understanding was that the estate was shared to the two houses (the house of Hannah Njeri Gitau and the house of Susan Njeri Gitau) so that each house could hold the respective shares in trust for the beneficiaries in the house, to whom the shares would eventually be given. However, the respondent is now treating the share of the house of their late mother as his, and this is why he is selling portions of it.

4. The respondent states that what the parties agreed to was that, upon the death of their mother, he was going to be absolute owner of each of the two houses, and that the applicants had no claim having signed away their claim to the estate.

5. It is clear that the applicants were beneficiaries of the estate of the deceased. They had not benefited from the deceased when he was alive. For each to give away her benefit, there needed to be unequivocal surrender. What reason was there for them to surrender their entitlement to the estate? The respondent had a brother (the late husband of the 6th applicant) who left a family, why would the family be surrendering its claim? There is no evidence that each of the applicants had any other parcel of land. The evidence of the applicants that the 6th applicant and her family were staying on the disputed land (from which the respondent wants they move out) was not challenged. When confronted with all this evidence, the respondent testified as follows:-

“ I have not shared the land with applicants. Susan died in 2005. Deceased left two houses. The property went to the two houses. I called the applicants to share the estate but they refused to cooperate. They were to come and help offset the loan taken by the deceased over the land. They were married but I undertook the loan alone. They were married but I undertook the loan alone. I called them to come we share the land but they refused to cooperate. I have no problem sharing some land with the applicants.....”

6. It is clear from that testimony that the share that was registered in the joint names of the respondent and his mother was the share given to his mother's house in the certificate of confirmation to be shared to the beneficiaries in that house.

7. I find that it was fraudulent for the respondent to convert parcels of Dagoretti/Ruthimitu/93 and Dagoretti/Ruthimitu/369 into his personal properties, to begin to deal with them as if they were his own and begin to dispose of them without reference to the applicants. He held each of these parcels in trust for himself and for the applicants.

8. The application was brought under **section 76** of the **Law of Succession Act (Cap. 160)**. Hannah Njeri Gitau was not made a party and yet she was a co-administrator. If the grant is revoked that will affect her without her having been heard. Nonetheless, under **section 47** of the **Act** and **rule 73** of the **Probate and Administration Rules**, I terminate the trust that the respondent held over land parcels Dagoretti/Ruthimitu/93 and Dagoretti/Ruthimitu/369. I direct that, within 30 days, the respondent files into court the registration status of each of the two parcels, including the subdivisions and in whose names they are. If he sold any of the subdivisions, I direct that he files the agreements of sale, and the latest searches of the subdivisions.

9. The applicants were children of the deceased, in the same way the respondent was a child of the deceased. None had better claim to the estate than the other. Under **section 40** of the **Act**, I declare that each of the applicants and the respondent had equal claim to the two parcels given to their house.

10. I ask that this matter be mentioned on **14th June 2020** for further orders.

11. Costs to the applicants.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 30TH day of APRIL 2020.

A.O. MUCHELULE

JUDGE