



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 142 OF 2003
IN THE MATTER OF THE ESTATE OF JOHNSON MUTURI MUCHEMI (DECEASED)
VIOLET WAMBUI MUTURI.....APPLICANT
VERSUS
REBECCA NJERI MUTURI.....RESPONDENT

JUDGMENT

1. The deceased Johnson Muturi Muchemi died intestate on 13th May 2002. He was survived by two widows: Violet Wambui Muturi (the applicant) and Rebecca Njeri Muturi (the respondent). The applicant's children with the deceased are Richard Wainaina Muturi, Joseph Irungu Muturi and Jacqueline Wangui Muturi. The children of the respondent are Alice Wairimu, Mary Wangui Muturi, William Muchemi Muturi and Asaph Mwangi Muturi. The estate of the deceased comprised:-

- (a) LR No. 3057 – Ol-Joro-Orok;
- (b) Plot No. 46-Moi Estate – Nyahururu Municipality;
- (c) LR No. 584 – Mukurweini – Nyeri;
- (d) Bank A/c No. [xxxx], Cooperative Bank, Nyahururu; and
- (e) Bank A/c No. [xxxx] National Bank of Kenya.

2. On 24th January 2003 the applicant and the respondent jointly applied for the grant of letters of administration intestate. The grant was issued on 2nd May 2003, and confirmed on 29th September 2004. The parties agreed that each of the property be shared equally between the two households. Each widow was to have a life tenancy over her share and to hold the same in trust for her respective children.

3. The estate was shared in accordance with the certificate of confirmation that the court issued, except for LR No. 3057 Ol-Joro-Orok which is the subject of this dispute. The applicant relocated to the United States of America before the parcel was shared. While she was away, the respondent obtained an *ex parte* order to share it. This led to her subdividing the parcel into three portions: Nyandarua/Ol-Joro-Orok West/5191, 5192 and 5193. 5191 measured 6.14 Ha and was registered in the name of the respondent; and 5193 measured 1.21 Ha. and also went to the respondent. On 5193 stands the matrimonial home that the deceased left. It is occupied by the respondent.

4. According to the respondent, the parcel was shared equally between the two houses with each house getting 6.14 Ha. To her, the parcel measured 12.28 Ha. According to the applicant, the total acreage of the parcel was 14.12 Ha, and therefore there is 1.84 Ha that the respondent did not account for. The second issue was that on 5193 (where the respondent lives) there are the graves of the deceased and the applicant's two late sons. The applicant would like to have half of this home, and to have the graveside registered in the joint names so that each widow (and her children) can access it. There is no dispute that the applicant and the deceased separated in 1977/1978, and that the respondent has always lived in the house on the portion since her marriage to the deceased. She was married to the deceased in 1976 before he separated with the applicant.

5. The respondent's evidence was that she has improved the matrimonial home to the tune of Kshs.200,000/=. Her case was that the entire 3057 was 12.28 Ha, and not the alleged 14.12 Ha and therefore the allegation that she sold the difference was not true.

6. The issues of whether the parcel was 14.12 Ha or 12.28 Ha is something that can be determined easily. The certificate of confirmation did not indicate how big this parcel was. Land is not something that can just disappear. It cannot be sold without records at the Lands Registry being affected. The applicant (through Richard Wainaina Muiruri) alleged that the respondent had sold the portion, without prove. The respondent denied that she has sold away portion of the land. The burden was on the applicant to prove. I find that she did not. I find that the total acreage of 30.57 was 12.28 Ha. In any case, when either side invited a valuer to the parcel the amount of land found was 12.28 Ha. It was the title which according to the respondent, indicated the land to be 14.12. Ha, but when the ground was surveyed and valued it was 12.28 Ha.

7. Richard Wainaina Muturi conceded that the respondent's 5192 and 5193 were equivalent to the applicant's 5191. A number of things concern the applicant. She stated that the total values of the respondent's portions were more than hers. The applicant engaged Dominion Valuers Limited who found that 5191 was worth Kshs.7,500,000/- whereas 5192 and 5193 were valued at Kshs.8,500,000/= and Kshs.1,200,000/=, respectively. The respondent states that she has improved the home that the deceased left her in. One cannot reasonably dispute this, given that she has lived there since 1976. I also consider that the applicant has not lived in this home since 1977/1978. The applicant asked to share in 5193 equally. The other thing that she sought was that each party gives 0.25 acres to produce a graveside and that the portion (0.5 acres) be in the joint names of the widows. The respondent testified and accepted the proposal of producing 0.25 acres for the graveside. The court accepts this common proposal.

8. The respondent planted eucalyptus, cypress and pine trees on the applicant's 5191. The value of the trees is Kshs.14,855,260/=. She planted the trees without reference to the applicant. The applicant states that she is not interested in the trees. The respondent states that she thought that since the land was bare she should plant trees on it. It was wrong for the respondent to interfere with the applicant's land by planting trees, or at all.

9. The widows agreed at confirmation to share 3057 equally, for each to have life tenancy and to hold it in trust for her children. The respondent shared the parcels without reference to the applicant but each got equal acreage. Regarding the values, the applicant stated that she got property worth Kshs.7,500,000/= when the respondent's property was worth Kshs.9,700,000/=. According to the valuation of Artex Realtors Limited commissioned by the respondent, the applicant's parcel was worth Kshs.9,000,000/= and her 5192 was worth Kshs.7,300,000/= and 5193 was in all worth Kshs.3,200,000/=.

10. I consider that the respondent has since 1976 occupied the matrimonial home. The deceased left her here. It is only fair that it be left to her.

11. When the widows agreed to share 3057 equally, there was nothing said about values. They were to share the parcel equally, irrespective of the values. The respondent, however, would have saved the parties this dispute had she jointly shared the parcel with her co-administrator (the applicant). Her sharing produced equality, except for the values. I have looked at the values produced by the valuers. I consider that each was commissioned by an interested party. In the circumstances of this case, I determine that the applicant shall get Nyandarua/Ol-Joro-Orok West/5191 and the respondent shall get Nyandarua/Ol-Joro-Orok West 5192 and 5193. I direct that the respondent immediately surrenders title deed to Nyandarua Ol-Joro-Orok East/5191 to the applicant.

12. Secondly, the applicant shall cede 0.25 Acres and the respondent shall cede 0.25 Acres, making a total of 0.5 Acres, around where the deceased and his two sons were buried, to form the family's graveyard. The 0.5 acres shall be registered in the joint names of the applicant and the respondent each in trust for her children.

13. Thirdly, subject to what the Ministry responsible for Forestry and the National Environment Management Authority shall say, the respondent shall cut down the trees she planted on Nyandarua/Ol-Joro-Orok West/5191 which shall be jointly sold and the proceeds shared equally between her and the applicant.

14. In conclusion, I direct that the certificate of confirmation issued on 29th September 2004 be amended to reflect the orders that I have given above.

15. I ask that costs be borne by the respondent.

DATED and DELIVERED at NAIROBI this 21ST SEPTEMBER 2020.

A.O. MUCHELULE

JUDGE