

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 107 OF 1991

IN THE MATTER OF THE ESTATE OF JAMES MBAI GATHURI ALIAS GATHURI (DECEASED)

MONICA WAIRIMU KAMAU.....APPLICANT

VERSUS

LOIS WANJIKU MBAI.....1ST RESPONDENT

JANE WAMBUI MBAI.....2ND RESPONDENT

RULING

1. The application dated 16th July 2018 seeks to execute the orders contained in the ruling delivered on 31st May 2018 distributing the estate of the deceased. The applicant Monica Wairimu Kamau was allocated 0.035Ha of Dagoretti/Uthiru/88 to use during her lifetime and thereafter the portion to be shared equally between her children. Her case was that her co-administrators Lois Wanjiku Mbai and Jane Wambui Mbai (the respondents) had refused to sign transfer papers to effect the order of distribution. She wanted them forced to sign failing which the deputy registrar does sign on their behalf. The application was not opposed.

2. However, I can see on record there is an application filed on 13th August 2018 by Lois Wanjiku Mbai (1st respondent) which seeks the review of the ruling that is sought to be executed. In the application, Lois states that the court mixed up parcels Dagoretti/Uthiru 83 and 88 in paragraph 17 of the ruling; that the mixture has led to unintended consequences in the distribution; and that this should be corrected by review.

3. If the instant application is determined and execution proceeds, and the review is eventually heard and decided in favour of Lois, the parties will be placed in awkward and prejudicial circumstances.

4. That being the case, I adjourn the present application. I direct that the application filed on 13th August 2018 be heard and determined first. The application (by Lois) shall be heard on 4th March 2019. Both Monica Wairimu Kamau and Jane Wambui Mbai should be served with it and should respond within 14 days from the date of service.

5. I make no orders as to costs.

DATED and DELIVERED at NAIROBI this 31ST day of JANUARY 2019.

A.O. MUCHELULE

JUDGE