



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 562 OF 1993

IN THE MATTER OF THE ESTATE OF GERALD KARUGU WARUTA (DECEASED)

ANETA KAGURE.....1ST APPLICANT

PETER MWANIKI.....2ND APPLICANT

CHARLES MATHENGE.....3RD APPLICANT

JOHN RUGUMI.....4TH APPLICANT

SIMON WACHIRA.....5TH APPLICANT

LUCY WAIHUNI.....6TH APPLICANT

LYDIA WANJUGU.....7TH APPLICANT

VERSUS

JOHN NGATIA.....RESPONDENT

RULING

1. The deceased Gerald Karugu Waruta died on 23rd September 1991. He hailed from Nyeri County. He was survived by three widows:- Aneta Kagure (1st applicant), Chivira Kirigo and Hellen Wangui. He had 16 children. The children of the 1st applicant were Peter Mwaniki (2nd applicant), Charles Mathenge (3rd applicant), John Rugumi (4th applicant), Simon Wachira (5th applicant), Lucy Waihuni (6th applicant) and Lydia Wanjugu (7th applicant).

2. In 1993 the respondent John Ngatia together with Salome Muthoni, Titus Ndungu and Saul Mathenge (all being some of the children of the deceased) petitioned the court for the grant of letters of administration intestate. The grant was issued to them on 30th June 1993, and confirmed on 3rd June 2002. In the petition they claimed that plot No. 538 Muhotetu was one of the properties that the deceased had left. In the confirmed grant, this property was to be shared equally among twelve sons of the deceased. They included the 2nd, 3rd, 4th and 5th applicants. The grant to the petitioners was revoked in the ruling delivered on 7th May 2015. The court found that the deceased left a Will, and therefore a petition for grant of probate ought to have been filed.

3. The revocation was at the instance of the applicants. They had alleged the proceedings leading to the grant and confirmation had been done without their knowledge, and that the deceased had in fact left a Will. Further, they claimed that before the deceased died he had transferred plot No. 538 Muhotetu to the first respondent which she eventually subdivided into four portions. She had taken one portion (Gituamba/Muhotetu/Block 2/875) and given parcels 766, 767 and 364 to her sons (including the 2nd and 3rd applicants). Their case was, therefore, that plot No. 538 Muhotetu and the resultant portions were not part of the free estate of the deceased to be shared among his beneficiaries.

4. It was the case of the respondent and the other petitioners in the revoked grant that plot No. 538 Muhotetu was one of the parcels in the estate of the deceased; that the applicants had fraudulently got it, subdivided and shared among themselves to the exclusion of the other

beneficiaries. In brief, the dispute will seek to resolve whether or not plot No. 538 Muhotetu was the free property of the deceased to be shared among his beneficiaries. It was on this understanding that this court ordered that the parcels that came from the plot, that is Gituamba/Muhotetu/Block 2/875, 766, 767, and 364 and the other properties in the estate should not be sold, transferred or further transferred until the dispute is resolved.

5. This was a conscious order made to protect the estate until all the competing claims are heard and determined. The applicants will have an opportunity to prove that plot No. 538 Muhotetu was not part of the estate of the deceased.

6. I am conscious of the requirements for review under **Order 45** of the **Civil Procedure Rules**. I find that there has been no proof of discovery of new and important matter or evidence, there has been no proof of mistake or error apparent on the face of the record, and there has been no proof of any other sufficient reason to warrant the review of the orders of 7th May 2018 (**Tokesi Wambili & Others –v- Simon Litsanga, Civil Appeal No. 90 of 2001 at Kisumu**).

7. I dismiss the application dated 4th June 2018 and filed on the same date by the applicants with costs.

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

A.O. MUCHELULE

JUDGE