



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 86 OF 2012
(P&A 10 OF 2013, GITHUNGURI LAW COURT)
IN THE MATTER OF THE ESTATE OF MUIRURI NJUGUNA (DECEASED)

DAVID WABURI MUIRURI

EUNICE WANGUI KURIA

MARY NJERI MUIRURI.....APPLICANTS

-VERSUS-

JOSEPH GACHEMA MAAI

MARY NYOKABI MUCHIRI

JASON KIMANI MAAI

FRANCIS GACHEMA MUIRURI

JOSEPHMBURU MAAI.....RESPONDENTS

JUDGMENT

BACKGROUND

The deceased to whom these proceedings relate died intestate on 8th May 2001. He was survived by one wife and 10 children. The assets that comprised of his Estate are Land parcel no. **Gatamayu/Kagwe/548 and Gatamayu/ Kagwe/471.**

On 21st February 2002, Teresiah Wangari Muiruri, widow of the deceased petitioned for grant of letters of administration at Githunguri Law Courts. The same was **gazetted No. 7036** on 3rd November 2003. The grant was subsequently issued to her on 19th November 2003. She applied for confirmation of the said grant on 18th January 2005. The grant was confirmed on 14th September 2006 as follows;

Jason Kimani Mai Gatamaiyu/Kagwe/471 whole share

Joseph Karanja Mai Gatamaiyu/Kagwe/548 1.69 acres

Peter Njuguna Mai 0.69 acres

Teresiah Wangari Muiruri 1.69 acres

David Waburi Muiruri 1.69 acres

James Njuguna Mai 1.69 acres

Koseph Gachema Muiruri	1.69 acres
Mary Njeri Muiruri	1.69 acres
Francis Gachema Muiruri	1.69 acres
Mburu Mai	1.69 acres
Eunice Wangui Kuria	0.25 acres
Mary Nyokabi Muchiri	0.25 acres

Dissatisfied by the said mode of distribution Mary Nyokabi Muchiri and Joseph Karanja Maai sought revocation of the said grant on ground of concealment of material facts adding that the same was obtained by means of untrue allegations and that the administrators failed to give a true inventory of the assets of the deceased.

On 4th March 2015 this court dismissed the said application and held that the confirmed grant is approved in the following terms;

Teresia Wangari Muiruri ¼ acre

Eunice Kuria ¼ acre

Mary Nyokabi 1.69 acres

Mary Njeri - 1/4 acre

James Njuguna – 1.69 acres

Mary Njeri – ¼ acre

James Njuguna – 1.69 acres

Peter Njuguna – 1.69 acres

Joseph Karanja – 1.69 acres

Mburu Maai – 1.69 acres

Joseph Gachena – 1.69 acres

Francis Gachena – 1.69 acres

David Wachira – 1.69 acres

By application dated 7th July 2015, parties sought review of the orders issued on 4th March 2015 and in its ruling dated 22nd April 2016 the court held as follows;

“(e) With regard as to the shareholding the measurements shall be as in the confirmed grant.”

APPLICATIONS

There are two applications for consideration 27th November 2017 and 12th January 2018.

APPLICATION DATED 27TH NOVEMBER 2017

The application dated 27th November 2017 is brought **under Rule 73 of the Probate and Administration Rules**. The applicant seeks that the administrator Teresia Wangari Muiruri be availed to the court and released to the applicants so that she can execute the mutation forms to enable the processing of new titles to finalize the distribution of the Estate. That the **OCPD** Kilgoris Police Station be ordered to assist to ensure that the administrator, widow of the deceased is availed in court and that costs be provided for.

The application is based on grounds that the Land Surveyor had already visited the parcel of land and carried out subdivision as per the court’s order and the administrator is required to execute the mutation forms. That the administrator has been withheld by Peter Njuguna Maai since 2012 and it is time that she is allowed to go back to her ancestral home where the deceased left her.

That the respondents are totally unwilling to let the administrator resettle at her portion at Kagwe after forcibly taking her away in 2012. That the Applicants are entitled and are ready and willing to be with their mother. When she is brought back in Kagwe she will be accessible to all her children and be able to administer the Estate. That it is only just and fair that the administrator is resettled in Kagwe.

Parties to the application dated 27th November 2017 filed written submissions. The Respondent in her submissions refutes Joseph Gachema's claim that he was close to the administrator as he was her stepson. The Respondents are out to ensure that this matter never gets concluded. It was submitted that the language used by the deponent is aimed at deceiving the Court and urges the Court to prescribe some sanctions to the respondents. Further, that the Applicant's Advocates had on several occasions appealed to the Respondents' Counsel to prevail upon his clients to avail the Administrator so that the mutation forms are executed in the alternative the Court may direct the Deputy Registrar to execute the necessary forms.

APPLICATION DATED 12TH JANUARY 2018

Mary Nyokabi Muchiri in her Application dated 12th January 2018. The application is brought under **Rule 49** of the Probate and Administration Rules. She seeks the following orders;

- i. All titles issued out of the original Land Title No. Gatamaiyu/Kagwe/548 contrary to the confirmation of grant issued herein on 14th September 2006 as approved by the court in terms of the Ruling dated 4th March 2015 be cancelled.**
- ii. All the survey works carried out on the land title Gatamaiyu/Kagwe/548 contrary to the confirmed grant as approved by the court in the terms of the ruling dated 4th March 2015 be annulled.**
- iii. The Land Registrar and surveyor Kiambu County to implement the confirmed grant issued in this cause by this Court on 14th September 2006 as approved by the Court in terms of the Ruling dated 4th March 2015.**
- iv. The application is based on grounds that; This Court in its ruling dated 4th March 2015 stated that Mary Nyokabi Muiruri was to get 1.69 acres from Land Title No. Gatamaiyu/ Kagwe/548. That an error occurred during surveying property known as Land Title No. Gatamaiyu/Kagwe/548 which was later subdivided into various titles which resulted into unlawful subdivision of the property to the Applicant who was to get 1.69 acres but instead got ¼ acre.**
- v. That justice demands that the remaining parcels from the subdivision of Land Title Gatamaiyu/Kagwe/548 be re-surveyed in order to determine their actual sizes and provide way for fresh sub-division in accordance with the certificate of confirmation as approved by this Court on 4th March 2015.**
- vi. That upon resurvey being conducted the parties be ordered to surrender the Title Deeds in respect of the suit property to the District Land Registrar Kiambu for cancellation and in default then the Court does order the Registrar to cancel the said titles and rectify the register by issuing new titles reflecting the dimensions of the newly subdivided plots.**

In her affidavit in support she avers that she is one of the beneficiaries of the deceased and that this honorable Court by an order dated 4th March 2015 confirmed the grant dated 14th September 2006 in the following terms;

Teresiah Wangari Muiruri – ¼ acre

Eunice Kuria - ¼ acre

Mary Nyokabi – 1.69 acres

Mary Njeri – ¼ acres

James Njuguna – 1.69 acres

Peter Njuguna - 1.69 acres

Joseph Karanja (now deceased) – 1.68 acres

Mburu Maai – 1.69 acres

Joseph Gachema – 1.69 acres

Francis Gachema – 1.69 acres

David Wachira – 1.69 acres

James Kimani – 1.69 acres

That an error occurred during surveying and the Applicant got ¼ acres instead of 1.69 acres. That justice demands that Land Title **Gatamaiyu/ Kagwe/548** be resurveyed in order to determine their actual sizes and provide for fresh subdivision in accordance to the certificate of confirmation as per its ruling dated 4th March 2015. That upon resurvey being conducted the parties be ordered to surrender their Title Deeds in respect of the suit property to District Land Registrar Kisumu for cancellation and in default the Court order the Registrar to cancel the said titles and rectify the register by issuing new titles reflecting the dimensions of newly subdivided titles.

The Application is opposed. David Waburi Muiruri in his Replying Affidavit dated 26th January 2018 avers that the application as framed is an attempt by the Applicant and other Respondent to delay the conclusion of this matter. That the Applicant has not annexed the relevant orders made on 4th March 2015 and the same is a deliberate scheme to mislead the Court. That the confirmed grant gave the Applicant 0.25 acres and the court affirms that position reasons the surveyor allocated her 0.25 acres. That vide its judgment of 4th March 2015 the Court dismissed the allegation raised by the Applicant and other group and re-affirmed the grant as issued by the Githunguri Law Court. That they had two issues with the said judgment in that it had typographical errors on the real names of the beneficiaries which they needed to be corrected and that although it principally upheld the confirmed grant from **Githunguri Law Court** the Learned Judge inadvertently proceeded to give a mode of shareholding which differed from the confirmed grant. That he and his sisters moved the Court vide their application dated 30th April 2015 for review orders to correct the names and shareholding. The application was heard and the Court on 22nd April 2016 delivered its ruling where the Court ordered that on correction of the names of the beneficiaries, the same maybe done and a corrected copy of the ruling be delivered to the parties. Further, with respect to change in shareholding, the measurements shall be as in the confirmed grant. In the confirmed grant the Applicant was allocated 0.25 acres. The court on its own motion corrected the judgment of 4th March 2015 to correct the names and shareholding. That the Court did not issue a new order but reviewed its earlier order. That as things stand, the judgment of the Court and the confirmed grant have been reconciled and are now in agreement. That the surveyor visited the site and was guided by the said judgment and the court proceeded to carry out subdivision. As demonstrated by a letter from the Surveyor the Applicant and her team blocked the Administrator from appearing before the land officials for the purpose of signing mutation so that the new title can be issued. The Court should now direct the Applicant and her team to release the Administrator to enable her to execute the mutation forms or direct the same to be executed by the Deputy Registrar of the court.

The Respondent's in their submissions on application dated 27th November 2017, raised one issue for determination as to whether the Applicants should be granted the orders sought. It was submitted that sometime in the year 2012, the administrator Teresiah Wangari Muiruri personally indicated to Joseph Gachema Maai that she wanted to relocate to Kilgoris and requested him to make arrangements facilitating her move due to her old age. That despite her move to Kilgoris the administrator since her appointment as an administrator has carried out her duties diligently without fail. That she was happy and healthy in Kilgoris and forcing her to move back to Kagwe would not only be prejudicial to her but also an infringement of her right and freedom of movement. He added that the applicants have never contacted the administrator seeking her to execute any mutation form or document necessary for the conclusion of succession process as per the Court's orders. Further, that the applicants have not adduced any evidence to prove they have been denied access to the administrator Teresiah Wangari Muiruri. That the application was brought in bad faith and should the orders sought be granted the same will threaten the rights and fundamental freedoms of the administrator as guaranteed **under Article 39** of the Constitution.

The Respondent in opposition to application dated 12th January 2018. It was submitted that the application is a ploy to ensure that the matter is never brought to a close. It was submitted that the grant was confirmed at Githunguri Law Courts and the same clearly states that Mary Nyokabi was allocated 0.25 acres. Further, when this court heard the matter it upheld the grant as confirmed by Githunguri Law Court. However, out of an oversight it attempted to re-state the distribution but erroneously gave Mary Nyokabi Muchiri 1.69 acres vide its ruling dated 4th March 2015. That the three beneficiaries sought review and correction of names and shareholding to align the two with the confirmed grant. The Applicants were duly served and did not object to the application for review. In its ruling dated 2nd April 2016 the Court ruled that the names be corrected on the shareholding, the Court ruled that the measurements shall be as in the confirmed grant. Further, that Mary Nyokabi Muchiri is entitled to 0.25 acres. That after the said ruling the Court proceeded administratively to correct the names and shareholding as per the Judge's order. That the Surveyor while implementing the said orders subdivided the parcel and gave Mary Nyokabi Muchiri 0.25 acres. That the application dated 12th January 2018 lacks merit and should be dismissed.

DETERMINATION

APPLICATION DATED 27TH NOVEMBER 2017

A perusal of the documents on record reveals that the grant in question was confirmed on 14th September 2006 as follows;

Jason Kimani Mai Gatamaiyu/Kagwe/471 whole share

Joseph Karanja Mai Gatamaiyu/Kagwe/548 1.69 acres

Peter Njuguna Mai 0.69 acres

Teresiah Wangari Muiruri 1.69 acres

David Waburi Muiruri 1.69 acres

James Njuguna Mai 1.69 acres

Koseph Gachema Muiruri 1.69 acres

Mary Njeri Muiruri 1.69 acres

Francis Gachema Muiruri 1.69 acres
Mburu Mai 1.69 acres
Eunice Wangui Kuria 0.25 acres
Mary Nyokabi Muchiri 0.25 acres

Mary Nyokabi Muchiri and Joseph Karanja Maai sought revocation of the said grant on ground of concealment of material facts adding that the same was obtained by means of untrue allegations and that the administrators failed to give a true inventory of the assets of the deceased.

On 4th March 2015 this Court dismissed the said application and reaffirmed the confirmation of the said grant in the following terms;

Teresia Wangari Muiruri ¼ acre

Eunice Kuria ¼ acre

Mary Nyokabi 1.69 acres

Mary Njeri - 1/4 acre

James Njuguna – 1.69 acres

Mary Njeri – ¼ acre

James Njuguna – 1.69 acres

Peter Njuguna – 1.69 acres

Joseph Karanja – 1.69 acres

Mburu Maai – 1.69 acres

Joseph Gachena – 1.69 acres

Francis Gachena – 1.69 acres

David Wachira – 1.69 acres

There arose some error in the names and slight deviation from the confirmed grant relied on by the Court. This prompted some of the beneficiaries to file application dated 7th July 2015 seeking review of the orders issued on 4th March 2015. The Court in resolving the said issue held as follows;

“(e) With regard as to the shareholding the measurements shall be as in the confirmed grant.”

From the fore going it is clear that this Court adopted the Certificate of Confirmation as per the initial certificate of confirmation of grant made by the Githunguri Law Courts and as such the same position prevails to-date. As such I find the Applicant’s application lacks merit and dismiss the same.

APPLICATION DATED 12TH JANUARY 2018

The Applicant demands the administrator to be produced before this Court to facilitate the signing of the mutation forms which will facilitate the transfer of the allocated shares concluding the succession matter.

A perusal from the Court record shows that the beneficiaries have sought the administrator be availed to sign the mutation forms but no adherence or follow up on the said orders has been made.

I note that at the time of filing this Succession Cause in the Trial Court the administrator was elderly at the age of 81 and as years have passed she could have advanced in age.

Joseph Gachema alleges to have taken the administrator on her own free will to Kilgoris where he alleges that she is happy and well catered for. I find that the Respondent is responsible for the administrator as she is under his care as such I order that he makes arrangement to have the administrator availed to confirm her life and safety.

If she is safe and but unable to execute the transfer forms, appointment of alternative administrator(s) maybe considered for purposes of

signing the mutation forms within a period of 30 days failure to which the Deputy Registrar will sign the mutation forms and any other documents for purposes of finalizing the distribution of the deceased's estate.

DISPOSITION

- 1) **The whereabouts of the administrator be confirmed to the court by the beneficiaries as she is an administrator of the Estate.**
- 2) **After establishment of the status/whereabouts/safety of administrator, the beneficiaries may consider the appointment of other administrators to be appointed to facilitate the distribution of the estate.**
- 3) **The distribution of the estate is as per orders of 4th March 2015.**
- 4) **If there are any anomalies with the position on the ground, parties to obtain the services of the Land Surveyor and apply to Court for review.**
- 5) **Costs in the cause. It is so ordered.**

DATED, SIGNED & DELIVERED IN OPEN COURT ON THIS 29TH JANUARY 2019.

M. W. MUIGAI

JUDGE

IN THE PRESENCE OF:

Mr. Kamau holding brief for Njogo for the Applicants

Respondents in person

Court Assistant - Jasmine