



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 222 OF 2013
IN THE MATTER OF THE ESTATE OF PERIS WAMBUI MATIRU (DECEASED)
MARGARET WANJIKU MATIRU.....APPLICANT
VERSUS
VIOLET WANDAHO MATIRU.....RESPONDENT
RULING

1. The deceased Peris Wambui Matiru died intestate on 28th March 2001 at the Nairobi Hospital. She left her husband Amon Matiru Ngwaci and the following children:

- a. Viviene Njeri Matiru;
- b. Christian Thuku Matiru;
- c. Grace Edna Njeri Matiru;
- d. Violet Wandaho Matiru (respondent);
- e. Matilda Rhoda Nyambura Matiru; and
- f. Margaret Wanjiku Matiru (the applicant).

2. Amon Matiru Ngwaci petitioned the court for the grant of letters of administration intestate. The grant was issued on 26th April 2003. Subsequently, the applicant and the respondent were included in the grant as co-administrators. On 17th August 2016 Amon Matiru Ngwaci died. That left the applicant and the respondent. There is no dispute that the deceased's estate comprised:-

- a. LR No. 209/397/5, Nairobi, which is a double storey building with flats and rooms, majority of which are leased; and
- b. LR No. 8491/1 (IR No. 138588) measuring about 50 acres in Kasarani.

3. There was disagreement about the distribution of the estate. The applicant applied for the confirmation of the grant in an application dated 14th August 2018. She sought that each of the properties be sold and the proceeds shared equally among the beneficiaries. She was supported by Viviene Njeri Matiru, Christian Thuku Matiru and Grace Edna Njeri Matiru. It was their case that the family has had several meetings to be able to agree on the distribution and management of the estate but there has been no agreement. They stated that they have irreconcilable differences. Grace Edna Njeri Matiru lives in the USA where she is a citizen. She stated that it was impossible for her to be in Kenya to participate in the management of the estate.

4. The respondent temporarily resides and works in the USA. She filed her application for confirmation dated 27th August 2018. Her case was that deceased's children should share the 3 bed roomed flat on LR No. 209/397/5 equally and rent the 2 bed roomed flats thereon and use the rent from them to pay for the land rates, security, water, electricity and maintenance of the common areas. Regarding the 50 acres, she stated that all the children had agreed to request the services of one Dr. Clement Sironka Ole Keriasek to pursue the government to

compensate them for the land and the proceeds be shared equally by the beneficiaries.

5. There is no dispute that each of the beneficiaries has an equal stake in the estate of the deceased.

6. Both sides agree that the Government sought to compulsorily acquire the 50 acres at Kasarani, but changed its mind and surrendered back the land. However, its physical location is not clear. Whether it does exist on the ground is not clear to the parties. If the land is eventually located, the respondent seeks that the Government acquires it and the compensation proceeds be shared equally among the beneficiaries. The applicant's case is that the land should be sold and the proceeds be shared equally. I consider that neither the respondent nor this court can direct the government to compulsorily acquire private land. It is therefore directed that, whenever the physical location of the 50 acres comprised in LR No. 8491/1 (IR No. 138588) is identified, the land shall be sold and the proceeds shared equally among the beneficiaries.

7. The respondent was supported in her application by Matilda Rhoda Matiru. The Ngong Road property has 6 three-bedroomed flats and 2 two-bedroomed flats. The respondent proposed that of the 6 flats, Viviene Njeri Matiru gets flat No. 14; Christian Thuku Matiru gets flat No. 13; Grace Edna Njeri Matiru gets flat No. 12; she gets flat No. 11; Matilda Rhoda Nyambura Matiru gets flat No. 10; and the applicant gets flat No. 9. The two-bedroomed flats would be rented to pay for rates and maintenance and common services. The building has three rooms and a common area at the servant quarters. She proposed that the rooms and the area be equally shared. Christian Thuku Matiru occupies the entire servant quarters against the family's will. He also occupies one three-bedroomed flat that his parents were occupying and where the family has lived since about 1980. The respondent's proposal was rejected by the applicant and those on her side. It was the further case of the respondent that she was willing to fund the sharing of the flats up to the stage where each beneficiary gets a title deed under the **Sectional Properties Act (No. 21 of 1987)**. This Act provides for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property.

8. The acrimony in the family can be discerned from paragraphs 6 and 15 of the respondent's supporting affidavit sworn on 27th August 2018 in which she alleges that the applicant has been uncooperative and has refused to attend family meetings and wants everything referred to her advocates; and that, she (the applicant) has locked up one of the two-bedroomed flats. Christian Thuku Matiru, as was stated above, forcefully occupies the servant's quarters and one three-bedroomed flat. According to the applicant and her side, there have been several family meetings which have not yielded anything. Instead, the parties have disagreed even more. According to them, even if the flats were to be shared as proposed, the management of the rent from the 2 two-bedroomed flats and the servant quarters, how to pay for rates and the shared services, and how to maintain the entire premises, would be issues that they will not agree on.

9. The respondent stated that she uses her share of the rental income from this property to supplement her income; that very soon she will return to Kenya and will rely on that income. The family has had this property since about 1980 when their parents established it as their home. Since the death of their parents, the children do not agree on the management of the property for the common good. Four of the children are not interested in sharing the physical building. They want it sold and the proceeds shared equally. Two of the children prefer sharing under the **Sectional Properties Act**. Tying the beneficiaries on the property where there is no goodwill and understanding, and yet there will be need to manage rent from the 2 two-bedroomed flats to pay for the shared services, will not help this family. From their affidavits since this petition begun, there is no love lost between the two sides.

10. Therefore, I find that the best solution is to sell the entire property (LR No. 209/397/5) and the proceeds be shared among the beneficiaries. I appreciate that it may take time to find a buyer. Until that is done, I give the two counsel 30 days to agree on a management company to manage the property and keep the rent into a joint account operated by them (the counsel). Any expenses will be drawn from the account, and be accounted. The money shall not be withdrawn, or given to any beneficiary, until there are further orders. If counsel shall not agree on a company, the court will appoint one.

11. As for the sale, counsel should agree on a valuer within 30 days failing which the court will appoint one.

12. In the meantime, and within 30 days, any beneficiary living on the property (LR No. 209/397/5) shall vacate so that the property can earn income/rent which will eventually be equally shared. If they do not vacate, a court bailiff will remove them.

13. In those terms, the grant issued herein shall be confirmed. The matter shall be mentioned on **3rd April 2019** for further orders.

14. This is a family dispute. I make no orders as to costs.

DATED and SIGNED at NAIROBI this 25TH FEBRUARY 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 27TH FEBRUARY 2019

ALI-ARONI

JUDGE