



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 460 OF 2014

RE ESTATE OF MARY WAITHIRA KARANJA (DECEASED)

PETRO MWANGI KARANJA.....1ST APPLICANT

RACHAEL NYAMBURA MUHUHIA.....2ND APPLICANT

VERSUS

JAMES KIRAGO KARANJA.....PROTESTOR

JUDGMENT

1. Mary Waithira Karanja (hereafter *the deceased*) died *intestate* on 7th November 2001. She was 102 years.
2. A dispute has arisen over the *distribution* of her free estate. The only asset seems to be land known as *Loc. 18/Githima/1217* measuring 0.8 hectares or thereabouts.
3. Petro Mwangi Karanja claims to be a *creditor* of the estate. In his supplementary affidavit of 15th November 2016 he avers that he *purchased* 0.25 acres from the deceased to construct a church.
4. A dispute over the sale arose during the *lifetime* of the deceased. The matter ended before the defunct *Kigumo Land Disputes Tribunal* in LDT No. 80 of 2005. On 15th September 2005, the elders ordered that the deceased *transfer* 0.25 acres to Karanja.
5. The decree was registered in *Kigumo Senior Resident Magistrates* LDT case 53 of 2005 on 9th February 2007. Learned counsel for Mr. Karanja submitted that since the decree is still valid; and, was never challenged in the *Provincial Appeals Committee*, he is entitled to the 0.25 acres.
6. In the citation filed on 26th June 2014, the other applicant (Rachael Nyambura Muhuhia) claims to be a *daughter in law* of the deceased. There are no details of her husband or claim for 0.6 acres. In *Form P & A 5*, she describes herself simply as an “*adult*”.
7. The protestor on the other hand claims to be the only *child* of the deceased. He is emphatic that the applicants are *strangers* to the estate. He disavows the alleged sale of a portion of the land to Karanja. He also refutes that the 2nd applicant was married to any of his brothers.
8. Learned counsel for the applicants filed submissions on 13th August 2018. The gravamen is that the decree has *not* lapsed; that the **Law of Succession Act** recognizes the interests of the *creditor*; and, that the portion sold to the 1st administrator does *not* comprise the *free estate* of the deceased.
9. Learned counsel for the protestor relied on submissions filed on 2nd August 2018. He contends that Rachael Nyambura Muhuhia *failed* to prove her claim; that the *Kigumo Land Disputes Tribunal* acted in excess of *jurisdiction*; and, that the protestor has *priority*.
10. He who alleges must prove. Section 107 of the **Evidence Act**. See also *Esther Wanjiru Kiarie v Mary Wanjiru Githaka*, High Court, Eldoret, P&A Cause 244 of 2002 [2016] eKLR.
11. The 2nd administrator claimed to be a *daughter in law* of the deceased. She provided *no* details of *her* husband or connection with the estate. In form *P&A 5*, she describes herself simply as an “*adult*”. There is no basis laid for her claim to 0.6 acres. I find that there is no *legal* or *evidential* basis for her claim. It is *dismissed*.
12. Regarding the claim by the creditor Petro Mwangi Karanja, a number of questions arise: Did the *Kigumo Land Disputes Tribunal* have

jurisdiction over title *registered* in the name of the deceased? The creditor alleges he entered into a *written sale agreement* before an advocate in Murang'a. What were the terms; and, how should the failed conveyance be enforced?

13. Rule 40 (3) of the **Probate and Administration Rules** provides that if it is *not* convenient for the *succession court* to determine those issues, the court *may* before confirming the grant *set aside* the disputed share to abide the determination in other proceedings. I will refer those proceedings on the disputed portion of 0.25 acres to the *Environment and Land Court Murang'a*.

14. In the meantime I *confirm* the grant for the *remainder* of the property: the balance of the property shall be wholly distributed to James Kirago Karanja.

15. The final orders shall be as follows-

i) That the claim by Rachael Nyambura Muhuhia for 0.6 acres in *Loc. 18/Githima/1217* or any other share of the estate is *dismissed*.

ii) That the portion of 0.25 acres in *Loc. 18/Githima/1217* claimed by Petro Mwangi Karanja is hereby *set aside* and shall abide the determination by the *Environment and Land Court Murang'a*.

iii) That the remainder of *Loc. 18/Githima/1217* shall devolve wholly to the son of the deceased James Kirago Karanja.

16. The grant shall be *confirmed* in terms of this judgment. In the interests of justice, there shall be *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 14th day of March 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

No appearance by counsel for the applicants.

No appearance by counsel for the protestor.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.