



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO.244 OF 2009

IN THE MATTER OF ESTATE OF GATHONI GICHINGIRI GITHINJI (DECEASED)

ELIZABETH WAMUYU GITHINJI.....PETITIONER/APPLICANT

-VERSUS-

MICHAEL WACHIRA GAKUO.....OBJECTOR/RESPONDENT

R U L I N G

The application before me is the Summons General dated 3rd December 2018 brought under rules 49 and 73 of the P&A rules seeking orders: -

1. THAT this court do please to lift the caution placed on L.R NO.KONYU/ICHUGA/340 by the objector/respondent.
2. THAT the costs of this application and the entire cause be borne by the respondent.

On the grounds: -

1. This cause was finalized and the grant confirmed in favour of the petitioner exclusively.
2. No appeal was filed against the confirmation.
3. Summons to revoke them was dismissed.
4. The objector has refused to withdraw the caution despite losing his claim to the land.
5. It is only mete and just that the caution be ordered removed.

It is supported by the affidavit of Elizabeth Wamuyu Githinji. It is opposed vide the Replying affidavit of Michael Wachira Gakuo the respondent sworn on 31st January 2019 and the annexures thereto.

A certificate of confirmation of grant was issued on 22nd July 2009 whereby the court determined that the applicant was the sole beneficiary of the Estate.

No appeal has been filed since the court's decision on 21st July 2008 in **Nyeri HCA 13/03 Paul Njonge Kariuki and 3 others vs. Elizabeth Wamuyu Githinji**. The respondent was the 4th appellant. Their appeal against the learned magistrate's decision in Karatina SRM Succession Cause 53/2001 was dismissed. He further filed a protest but it was dismissed vide a ruling delivered on 22nd July 2009. Since then he has not filed any other appeal.

His replying affidavit reiterates what I found upon perusal of the court record, his claim of being entitled to 1.3 acres out of the parcel No.Konyu/Ichuga/340 being the reason he has refused to remove the caution.

I have considered the application and the rival affidavits. I have noted that the issues raised by the respondent were the same ones he raised at the hearing in the magistrate's court, in the appeal, and also when he filed a protest. In all these forums his claim was dismissed, and the courts found in favour of the applicant herein. He cannot be heard to reopen those issues for determination in the applicant's application to

have the caution he lodged against the title with respect to all these proceedings. His refuge lies elsewhere.

The only remaining thing in this matter is for the estate to devolve to the rightful beneficiary, who is the applicant. That cannot happen for as long as the caution by the respondent is still in place. There are no stay orders against that hence there is nothing to stop the removal of the said caution.

Under Rule 73 of the P&A rules the inherent powers of court to act in the interests of justice are set out:

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court

This matter has been in this court since 2009, ten years. It must come to an end. The applicant's right to inherit the property herein has been confirmed in three different determinations which have not been set aside or stayed. The respondent's refusal to remove the caution in these circumstances amounts to an abuse of the court process. It is in the interests of justice that her application be allowed.

The application is therefore allowed. The caution lodged by the respondent on Konyu/Ichuga/340 is and is hereby lifted. The Land Registrar to act accordingly.

The respondent to bear the costs of the application.

Dated, signed and delivered in open court at Nyeri this 30th April 2019.

Mumbua T. Matheka

Judge

In the presence of:-

Court Assistant: Juliet

Both Parties present

Judge