



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 2371 OF 2013

IN THE MATTER OF THE ESTATE OF BENARD NGUGI WAMIIRI (DECEASED)

LUCY WAMBUI NJOROGE.....1ST PETITIONER

MONICAH WANJIRU SHMUEOSHILI.....2ND PETITIONER

VERSUS

FRANCIS GATERI KINUTHIA.....1ST RESPONDENT

JOSEPH WAINAINA KINUTHIA.....2ND RESPONDENT

JUDGMENT

1. This matter revolves around the estate of one **Benard Ngugi Wamiiri**, who died on the 5th of May 1972, leaving no spouse or child which could be the genesis of this long-protracted matter.

2. This particular Petition for Grant of Representation was initiated on the 17th of September 2013, the grant issued on 7th of March 2014 and confirmed on the 21st of October 2014. The only asset of the estate; ½ undivided share of **Title No. Dagoretti Riruta/232** was distributed to **Lucy Wambui Njoro**ge and **Monicah Wanjiru Shimueoshili**. (Respondents)

3. **FRANCIS GATERI KINUTHIA & JOSEPH WAINAINA KINUTHIA** (Applicants) filed for revocation and annulment of the grant on the 14th of July 2015, on grounds that the proceedings to obtain the said grant were; defective in substance, there was concealment of material facts, untrue allegations made, that the property had already been distributed to one **Mr. Peter Karung'u Njoro**ge and who later sold to their father deceased a portion of the property, that Title number Dagoretti Riruta/232 had since been subdivided to title Nos. Dagoretti/Riruta/5879, 5884, 5881 and 5882 and lastly the Respondents failed to disclose to the court that they had previously petitioned this court in Succession Cause No. 1184 of 2009 they abandoned.

4. The property subject matter has been subject of several other suits, including,

i. District Magistrate Court LSC No. 10 of 1972.

ii. HCC No. 1646 of 1973

iii. Land dispute before Kawangware Chief on 10th March, 2015 etc.

5. The undisputed fact is that the deceased herein **Benard Ngugi Wamiiri** and **John P. Kinuthia** are the registered owners of **Dagoretti/Riruta/232**. A title dated 24th November 1966 is evidence of the fact.

6. A Green Card issued by the Land Registry Nairobi indicates the 1st registered owner to have been Ngugi Wamiiri registered as such in 1958 and thereafter Benard Ngugi Wamiiri and John P. Kinuthia each held ½ undivided shares and registered as such on 23rd November, 1966 on which date a caution was also placed by one Elizabeth Wamari which caution was removed on 10th of July 2007 thereafter on 15th June 2010 the said title was closed as it had been subdivided into new titles Nos. 5879-5882.

7. The case has been convoluted by the many affidavits filed by the parties and this may have been occasioned due to the length of time the

matter has been in dispute 47 years! In the mist of confusion the court deduced the case as follows:

8. The Applicants claim is that the Respondents in applying for the grant herein failed to disclose that when the deceased died he left the property to his nephew Peter Karung'u Njoroge an, uncle. Further that the deceased had sold $\frac{1}{2}$ of his share as to the Applicant's father so that Peter Karung'u Njoroge was entitled to only $\frac{1}{4}$ of the property. It is also their case that though Peter Karung'u left an heir, the said heir did not give his consent to the proceeding before court further there existed a prior succession cause namely Succession Cause No. 1184 of 2009 filed by the same Respondents which they did not disclose.

9. The Respondents on their part deny that the Applicant's father bought the $\frac{1}{4}$ share they claim and that the $\frac{1}{2}$ share of the deceased herein remains an asset of the estate. They claim that the deceased left his share to their grandmother one Teresia Wambui Njoroge wife of his only brother Njoroge Wamiiri and in turn Teresia left the property to her daughter Virginia Wanjira Njoroge mother of the Respondent and therefore the rightful heirs of the property are the Respondents herein.

10. Having had the evidence of the parties, considered the pleadings and submissions by counsels, the one single issue before court is whether or not to annul and revoke the grant issued on the 7th of March 2014 and confirmed on the 21st of October, 2014.

11. In arriving at a decision the court took note of the nature of convoluted evidence by both sides and paid attention more on the documents on record. Though the Applicants claim that Peter Karung'u transferred the $\frac{1}{2}$ share of $\frac{1}{2}$ of Benard Wamiiri's share which the Respondents deny, the actual position is captured by the evidence of the Respondents grandmother Teresia Wambui Njoroge, their uncle Peter Karung'u and their grandfather Njoroge Wamiiri in District Magistrate Court LSC Cause No. 10 of 1972. The evidence of the three stated:

“Witness I Njoroge Wamiri

.....I know the deceased Benard Ngugi Wamiiri; he is my real brother. He died on 5th May, 1972 at home and we buried him at home, in his land Dagorretti/Riruta/232. Before he died he said his portion will be registered under the name of his

nephew Peter Karung'u and the other portion to be registered under the name of John Peter Kinuthia Gateri because that land was a joint owned land of the deceased and John Peter Kinuthia Gateri.

John Peter Kinuthia Gateri is to be registered with (not clear) of the land and (not clear) will be registered under Peter Karung'u. (Undeline provided)

Witness 2 Peter Karungu

.....witness I Njoroge Wamiiri is my father. The deceased is my uncle..... He left land Dagoretti/Riruta/232 which was a joint owned land for himself and John Peter Kinuthia Gateri. He left a will that I shall be registered with $\frac{1}{4}$ of the land which was his share and $\frac{3}{4}$ of that land be registered under the name of John Peter Kinuthia Gateri. All of us who are here have agreed with the suggestion. I want to be registered with $\frac{1}{4}$ of that land.”

Witness 3 Teresia Wambui

“.....witness 1 Njoroge is my husband. The deceased Benard Ngugi Wamiiri is his younger brother. He died on 5th May 1972. The land should be registered under the name of my son Peter Karung'u and $\frac{1}{2}$ of that land should be registered under John Peter Kinuthia Gateri. The deceased said that should be done.”

12. Other witnesses reiterated the same and in a judgment delivered on the 9th of August 1972 the court directed that Peter Karung'u son of Njoroge would get 0.35 acres whereas John Peter Kinuthia Gateri would get 1.05 acres.

13. The above proceedings made reference to and the judgment were never challenged in any court of law and remain binding on all.

14. The above was a land succession case well determined and therefore since the same remains unchallenged the judgment pronounced remains in force.

15. The Respondents played ignorant of the subdivisions done in 2010 however communication between the surveyor and one of the 2nd respondent on the 22nd of July 2011 indicate very well that the Applicants were in picture and their averment that they were not in the know is not true.

16. Further the respondents failed to disclose that they had filed a succession cause being cause No. 1184 of 2009 and equally failed to shade light why they abandoned the same.

17. Before concluding the court notes that on record are affidavits sworn by “relatives; aunts and a cousin” of the respondents seemingly giving the family's position on the matter and supporting the respondents' case. The 3 persons failed to appear in court to adduce evidence and be subjected to cross examination by the Applicants. The said affidavits have been ignored as the matter was to be heard by way of oral evidence.

18. All in all, I have formed the opinion that the heir of Benard Ngugi Wamiiri was Peter Karung'u and he was only entitled to $\frac{1}{4}$ of the

property known as Dagoretti/Riruta/232.

19. Secondly the matter of the Estate of Bernard Ngugi Wamiiri was heard and determined in the District Magistrate's Court L.S.C. No. 10 of 1972. The $\frac{1}{4}$ property now revolves round the Estate of Peter Karung'u and $\frac{3}{4}$ of the same to the heirs of John Peter Kinuthia Gateri.

20. Therefore the grant herein issued on 7th of March 2014 and confirmed on 21st October, 2014 is hereby revoked and annulled.

21. Costs to the Applicants.

Dated and Delivered in Nairobi on this 31ST day of OCTOBER, 2019.

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ALI-ARONI

JUDGE