

REPUBLIC OF KENYA

IN THE HIGH COURT OF KEYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 119 OF 1993

IN THE MATTER OF THE ESTATE OF NGUGI NJOROGE (DECEASED)

SERAH NJERI MUTHONI.....APPLICANT/OBJECTOR

VERSUS

CHARLES NJOROGE NGUGI.....RESPONDENT/ADMINISTRATOR

JUDGMENT

1. The deceased Ngugi Njoroge died intestate on 22nd October 1984 following a road accident. He left a parcel of land Riruta/Dagoretti/340 in his name. He was the son of Njoroge Ngugi. Njoroge Ngugi had two wives: Muthoni and Wanjeri. The deceased was the son of Wanjeri. He had a sister called Phyllis Wanjiru Njoroge. It does not appear to be in dispute that before Njoroge Ngugi died, he settled Muthoni and Wanjeri on different portions of land. The land on which he settled Wanjeri is what is now Riruta/Dagoretti/340. He sold a portion of this land to Jackson Mahindi Gitonga. This is how when the deceased died his son George Njoroge Ngugi and the purchaser Jackson Mahindi Gitonga petitioned the court in 1993 for the grant of letters of administration. The grant was issued to them on 22nd April 1993, and confirmed on 9th November 1993. The two were asked to each get 0.2428Ha from the parcel.

2. George Njoroge Ngugi had siblings. On 22nd June 1996, one of them called Charles Njoroge Ngugi (the respondent) filed application to revoke the grant on the basis the administrators had petitioned the court for the grant without the knowledge of the rest of the deceased's family who were therefore going to be disinherited.

3. The record shows that a fresh grant was issued jointly to George Njoroge Ngugi, Charles Njoroge Ngugi and Jackson Mahindi Gitonga. A certificate of confirmation of grant was issued on 6th March 1998 in which Jackson Mahindi Gitonga got 0.2428Ha. George Njoroge Ngugi, John Kamau Ngugi, Charles Njoroge Ngugi, Samson Mahugu Ngugi, Phyllis Njoki Ngugi and Lucy Wanjiru Ngugi were to each get 0.0466Ha.

4. On 24th June 2013 the applicant Serah Njeri Muthoni brought the present application seeking to have the grant revoked. The application was brought under **section 76** of the **Law of Succession Act (Cap 160)** and **rule 44(1)** of the **Probate and Administration Rules**. She alleged that the grant had been obtained fraudulently by the making of a false statement, there had been concealment of some material, there had been an untrue allegation of a fact essential in point of law, and that the proceedings leading to the grant were defective in substance. Her case was that parcel Riruta/Dagoretti/340 was given to the deceased jointly with his sister Phyllis Wanjiru Njoroge, but was registered in his name by their father Njoroge Ngugi. Phyllis lived on this land. She did not get married, but got one child called Hannah Muthoni who also lived on this land. Hannah did not get married but got 9 children, three of whom died. Those living are six and include the applicant. They all live on the land. According to the applicant, this is ancestral land that jointly belonged to the deceased and Phyllis Wanjiru Njoroge. Now that her grandmother (Phyllis Wanjiru Njoroge) and her mother (Hannah Muthoni) have died, she and her siblings should benefit from the land. It was therefore wrong, she said, for them not to be informed of the proceedings leading to the grant and for the administrators (including the respondent) not to disclose to the court all the information above.

5. The respondent opposed the application by swearing affidavits on 18th June 2014 and 23rd June 2014. His case was that the applicant was not a beneficiary of the estate of the deceased, and was not therefore entitled to be involved in the proceedings leading to the grant. Phyllis Wanjiru Njoroge was married in Nyahururu, and that she came to attend the funeral of the deceased and thereafter refused to return to her matrimonial home. Hannah Muthoni came to live on this land after her mother died. Lastly, the parcel Riruta/Dagoretti/340 no longer exists as it was subdivided and shared following the issuance of the certificate of confirmation.

6. The parties gave oral evidence. The applicant called her brother Paul Gichuhi Muthoni (PW 2) and Amina Nyaguthi Mare (PW 3), the daughter of Muthoni who was one of the wives of the deceased's father Njoroge Ngugi. The respondent called his mother Lucy Wanjiru (DW 1), who is one of the widows of the deceased, and Evanson Thiongo Macharia (DW 2) who was the deceased's friend.

7. It was clear from the evidence called that the applicant's late mother (Hannah Muthoni) begun laying claim to this land as early as 1992 and this was strongly resisted by George Njoroge Ngugi who demolished her houses and chased her from here. Her claim was variously heard by the local administration, but it does not appear any solution was reached. In short, the applicant's claim to the estate is on the basis that the deceased held the land in trust for himself and for her grandmother, and that, through the grandmother and her late mother, she became entitled to the estate of the deceased. In other words, the applicant challenges the title that was held by the deceased on the basis that the deceased held the title in trust for her grandmother Phyllis Wanjiru Njoroge.

8. The jurisdiction of this court is limited to determination of the estate and beneficiaries of the deceased, and the ascertainment of their respective shares. Where a party challenges the title that was held by a deceased, that is a matter that is beyond the jurisdiction of the court. The challenge should be made in a court created under **Article 162(2)(b)** of the Constitution of Kenya 2010 and **section 13** of the **Environment and Land Court, 2011 (Cap 12A)**.

9. The consequence is that this application was misconceived, and is therefore dismissed with costs.

DATED and DELIVERED at NAIROBI this 17TH day of JANUARY 2018

A.O. MUCHELULE

JUDGE