



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 2513 OF 2010

IN THE MATTER OF ESTATE OF GACHIE KAMAU (DECEASED)

FRED KARIUKI GACHIE.....APPLICANT

DAVID NGIGI GACHIE.....APPLICANT

PETER NGIGE KAMAU.....APPLICANT

VERSUS

PETER MBURU GACHIE.....RESPONDENT

R U L I N G

1. The grant in the Estate of the late Gachie Kamau deceased was confirmed on 15th of August 1996 in the following terms:

“Land parcel No. Karai/Karai/256

- 1. Peter Ngigi Gachie**
- 2. David Ngigi Gachie**
- 3. Peter Mburu Gachie**
- 4. Fred Kariuki Gachie**

To be registered in equal shares”

2. The parties are yet to get their separate title deeds as the matter has been subject of court proceedings. For now two applications are filed and were to be argued simultaneously. Fred Kariuki Gachie filed an application dated 23rd November 2017 seeking to have the Deputy Registrar of this court execute all relevant documents to effect subdivision of land parcel subject matter. His complaint is that Peter Mburu Gachie has failed not only to sign but to agree with others on how the subdivision should be done due to selfish reasons. Peter Gachie on the other hand says his proposal has been ignored and further the proposal by Fred Gachie will dislocate him and his family from the space they have occupied for years.

The second application by the same applicant Fred Kariuki Gachie dated 26th January 2018 seeks for removal of a caution against the property subject matter allegedly placed by Reuben Kamau Mburu son of Peter Mburu Gachie

3. Reuben Kamau Mburu did not respond to the 2nd application neither did his father Peter Mburu Gachie.

4. In brief, the Applicant’s counsel in his submission argued that the court is functus officio, as the grant herein was confirmed, the application seeking for revocation of the grant was declined and left for now is for subdivision and issuance of title.

5. Briefly, on his part the Respondent’s counsel submitted that his client has no issue with the court order directing the property be divided in four equal shares. However, an issue not dealt with previously has arisen, which relates to the subdivision of the property; who gets what portion and in what space. Further both applications before subject of this ruling were filed by the applicant who sought for the court’s

intervention, and he cannot therefore be heard with the same breath to say that the court is functus officio.

6. In my considered opinion the parties have an issue which they have failed to resolve; in that they cannot agree where to place boundaries and this cannot be overlooked as failure to resolve the same will be an impediment to the subdivision exercise and to the issuance of titles. And since the parties have failed to resolve the matter the same ought to be arbitrated upon. The previous ruling of the court and the confirmation of grant did not speak to the issue. The Deputy Registrar if ordered to sign subdivision papers would certainly face a problem unless there is an agreement or an order on how subdivision will be carried out.

7. As relates to the caution, I am of the view that the order being sought for is premature in that there exists a disagreement that cannot be wished away. In the circumstances this court cannot be said to be functus officio. Secondly, in the first instance I direct that the matter of laying of boundaries and who occupies which portion of the land subject matter be subjected to mediation process.

The matter be placed before mediation Deputy Registrar.

Mention before court after the mediation process

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF July, 2018.

.....

ALI-ARONI

JUDGE

In the presence of:

.....Advocates for Applicants

.....Advocates for Respondent