



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.909 OF 2008

IN THE MATTER OF THE ESTATE OF JOSEPHINE NJOKI KIBE (DECEASED)

RULING

1. The deceased herein Josephine Njoki Kibe died intestate on 20th September 2005 leaving behind one asset being LR Karai/Gikambura/571. A grant of letters of administration intestate was made and issued to Thomas Wanyoike Kibe on 22nd June 2010 and subsequently confirmed on 27th July 2011 and the estate shared out as follows:

- (1) Thomas Wanyoike – 0.20 acres**
- (2) David Kinuthia Kibe – 0.20 acres**
- (3) Violet Nyokabi Mungai – 0.20 acres**
- (4) Margaret Wanjiru Wandaro- 0.20 acres**
- (5) John Kibe Waweru**
- (6) Samuel Kimani Njoroge – 0.25 acres**
- (7) Phrasiah Wangui Gakuru – 0.25 acres**
- (8) Rahab Wambui Njoroge – 0.25 acres**
- (9) Violet Njeri Njoroge – 0.25 acres**

2. Before execution of the confirmed grant by way of transmission to each beneficiary, Samuel Kimani Njoroge sold his share to one Peter Gatherer Wanjau. Unfortunately, Samuel Kimani died before completion of the transfer process. Consequently, Peter Gatherer Wanjau the purchaser filed an application dated 13th February 2018 seeking revocation or annulment of the grant. He further lodged a restriction in the lands office effectively barring any transaction touching on the entire parcel of land i.e. Karai/Gikambura/2515.

3. Aggrieved by this development, the administrator herein moved this court by summons dated 27th March 2018 seeking the removal of the restriction lodged against the entire land and instead proposed to separate Samuel Kimani's share from the rest of the beneficiaries' beneficial interest (Share) amounting to 1.75 acres as per the confirmed grant and then Samuel's share of 0.25 acres to remain with the restriction in force pending determination of the ownership dispute over that portion.

4. Application is premised on grounds on the face of it and affidavit in support deposed by Thomas Nyoike Kibe urging the court to remove the restriction lodged against L.R. No. Karai/Gikambura/2515.

5. However, on 4th April 2018, application for revocation was withdrawn by consent leaving the application dated 27th March 2018 for hearing and determination. When the said application came for hearing on 6th June 2018, there was no appearance on the part of the respondents herein Peter Gatherer Wanjau, estate of Samuel Kimani Njoroge and the Land Registrar. The matter therefore preceded ex parte with counsel for the applicant relying on the affidavit in support.

6. I have considered the application herein, supporting affidavit and oral submissions by counsel for the applicant. The crux of the matter is the removal of a restriction lodged by one Mr. Peter Gatherer Wanjau against LR Karai/Gikambura/2515. The application is grounded on the understanding that the court had confirmed a grant in respect of LR No. Karai/Gikambura/571 in which 9 beneficiaries as stated above were given their respective share with Samuel getting 0.25 acres which he allegedly sold later.

7. Upon perusal of the petition application and certificate of confirmation, the asset that was shared out was Karai/Gikambura/571. The court never distributed land parcel No. Karai/Gikambura/2515. This parcel of land against which a restriction has been lodged is not recognized in the certificate of confirmation hence the court never distributed the same. I have not seen any amended or rectified grant showing that LR Karai/Gikambura /2515 was the intended estate for distribution in respect of the estate herein.

8. For the above reasons stated, this court is reluctant to issue the orders sought as they are not relevant to the land that was the subject of certificate of confirmation of grant issued on 27th July 2011 (Karai/Gikambura/571) unless and until a rectification or correction is done.

9. Accordingly, application is hereby dismissed with no order as to costs.

SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF JULY, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

Mr. Wawire.....Counsel for applicant

N/A..... 1st respondent

N/A 2nd respondent

N/A.....3rd respondent

Edwin..... Court Assistant