



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2127 OF 2015

IN THE MATTER OF THE ESTATE OF PETER WAIHAKA KERU (DECEASED)

JUDY WAMBUI KINYANJUI.....1ST APPLICANT
PENINAH WANJIKU2ND APPLICANT
ALICE NYAKIANDA.....3RD APPLICANT
CATHERINE MBAIRE KINYANJUI.....4TH APPLICANT
IRENE WARINGA.....5TH APPLICANT
LYDIA MUTHONI NG'ANG'A.....6TH APPLICANT
KENNEDY KIMANDO KINYANJUI.....7TH APPLICANT

VERSUS

TERESA WANJIKU WAIHAKA.....1ST RESPONDENT
JAMES KARIUKI KINYANJUI.....2ND RESPONDENT
DAVID WAIHAKA KINYANJUI.....3RD RESPONDENT
STEPHEN THUO KINYANJUI.....4TH RESPONDENT
JOSPHAT KARIUKI.....5TH RESPONDENT
PETER KIMANI.....6TH RESPONDENT

RULING

1. The applicant Judy Wambui Kinyanjui, Peninah Wanjiku, Alice Nyakianda, Catherine Mbaire, Irene Waringa, Lydia Muthoni Ng'ang'a and Kennedy Kimando Kinyanjui are the children of the deceased

Stanley Kinyanjui Kiru who died on 30th January 2014. The deceased was the younger brother of Waithaka Peter Keru who is the subject of this application and who died on 27th June 2013. There is a parcel of land number Ndumberi/Ndumberi/1891 which was in the name of the deceased Waithaka Peter Keru who is the subject of this application and who died on 27th June 2013. There is a parcel of land number Ndumberi/Ndumberi/1891 which was registered in the name of the deceased Waithaka Peter Keru to hold in trust for himself and for his brother Stanley Kinyanjui Kiru in equal shares. Before he (Waithaka) died he subdivided the land into 12 portions as follows:- 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220 and 3221. According to the applicants, the portions were to be shared among the 12 beneficiaries of his father. He signed the transfer forms but before he had obtained the consent of the Land Control Board he fell sick and subsequently died. The applicants state that the respondents (1st respondent Teresa Wanjiku Waithaka was the wife of Waithaka Peter Keru) conspired with the local administration and the lands office and caused some of the parcels to be registered in the names of Josephat Kariuki Kaguru (5th respondent), Peter Kimani Kinyanjui (6th respondent), James Kariuki Kinyanjui (2nd respondent), David Waithaka Kinyanjui (3rd respondent), and Stephen Thuo Kinyanjui (4th respondent).

2. According to the 3rd respondent (who swore a replying affidavit on his behalf and on behalf of the other respondents), the subdivision of parcel 1891 was done in 2005 following agreement between the two deceased. The 12 brothers went to the children of his (David's) father Stanley Kinyanjui Kiru. The distribution was as follows:-

- (a) David Waithaka – 3221
- (b) James Kairuki – 3220
- (c) Stephen Thuo – 3219
- (d) Kennedy Kimando – 3218
- (e) Judy Wambui – 3217
- (f) Florence Wambui – 3216
- (g) Stephen Thuo – 3215
- (h) James Kairuki – 3214
- (i) David Waithaka – 3213
- (j) Kennedy Kimando – 3212
- (k) Peter Kimani – 3211
- (l) Josephat Kariuki – 3210

Each took possession of the respective parcel. Before the two brothers died, they had commenced the process of transfer. They went to the Land Control Board and obtained consent, and had transferred some of the portions to the respective beneficiaries.

3. The applicants' case is that the transfers were fraudulently done after the death of their father and uncle. This is denied by the respondents.

4. On 26th August 2015 the applicants filed this motion seeking that there be orders preserving the estate of the deceased Waithaka Peter Keru so that it should not be sold, transferred, alienated, developed,

trespassed on or in any other way interfered with pending the hearing and determination of the citation. The citation was filed where with the motion by the 1st applicant. The citation stated that the 1st respondent is the widow of the deceased; that the deceased leaving property in respect of which the applicants (as the children of the deceased Stanley Kinyanjui Kiru) were entitled; that the respondents should petition the court for the grant of letters of administration intestate, failing which the applicants be allowed to seek such letters. The motion was brought to preserve the estate in the meantime. According to "JWK5", parcels 3218, 3217, 3220 and 3216 are the portions of Ndumberi/Ndumberi/1891 that are still registered in the name of the deceased Waithaka Peter Keru.

5. The foregoing shows that the applicants are persons interested in the estate of the deceased Waithaka Peter Keru. No letters have been taken out in respect of the estate of the deceased. The applicants have made claims that, in the past, the respondents have had some of the estate of the deceased transferred to themselves and/or other people after the death of the deceased and before any grant. The merit of these claims aside, there is need to protect and preserve the estate until such time that a petition has been filed in which the interests of the applicants can be lodged, heard and determined.

6. In conclusion, in the wider interests of justice, and in order to expedite the matter, I direct the 1st respondent Teresa Wanjiku Waithaka to petition the court for the grant of letters of administration intestate in respect of the estate of her late husband Waithaka Peter Keru within 60 days from today, failing which the 1st applicant Judy Wambui Kinyanjui shall be at liberty to petition. Until the petition has been filed and the applicants have therein lodged their claim to the estate, I make an order that parcels Ndumberi/Ndumberi/3218, 3217, 3220 and 3216 shall not be sold, transferred and/or in any other manner alienated. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 23RD FEBRUARY 2017

A.O. MUCHELULE

JUDGE