



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2927 OF 1999

IN THE MATTER OF THE ESTATE OF JONATHAN MBATIA KIEYA - (DECEASED)

PETER KABUI MBATIA.....1ST APPLICANT

ANASTASIA WANJIKU KABUI.....2ND APPLICANT

VERSUS

ELIZABETH NJERI MBATIA.....1ST RESPONDENT

SIMON THAIRU MBATIA.....2ND RESPONDENT

RULING

1. The deceased Jonathan Mbatia Kieya died intestate on 6th May 1999 at Nairobi. He left a piece of land registration number Dagoretti/Riruta/4654. He left a widow Elizabeth Njeri Mbatia (1st respondent) and the following children:-

a. Margaret Wanjiku Kungu;

b. Peter Kabui Mbatia (1st applicant);

c. John Kariuki Mbatia;

d. Gladys Njeri Mbatia;

e. Simon Thairu Mbatia;

f. Jennifer Wambugu Mbatia;

g. Jane Wanjiku Mbatia; and

h. Naomi Wambui Mbatia.

2. The 1st respondent filed a petition for the grant of letters of administration intestate. The 1st applicant

filed an objection to the 1st respondent's petition. He withdrew it on 6th April 2000, which paved way for the grant to be issued to the 1st respondent on 11th April 2000. It is common ground that the withdrawal followed a family meeting. The 1st applicant therefore estopped from raising issues with the petition or the grant as he allowed the process to proceed after he had initially opposed it.

3. On 9th May 2000 the 1st respondent applied for the grant to be confirmed. She proposed that the parcel of land be registered in her names "and later to all the beneficiaries". On 10th May 2000 the grant was confirmed in those terms. On 3rd October 2001 the 1st applicant filed an application to revoke the grant. He complained that the 1st respondent had registered the parcel in her name and had proceeded to file a suit (HCCC No. 1431 of 2001) at Nairobi seeking to evict him and his wife Anastasia Wanjiku Kubai (2nd applicant). There was no complaint that he had not been involved in the application for the confirmation of the grant. He says the suit was dismissed for lack of merits. He stated that his application for revocation was compromised following a family meeting.

4. On 3rd October 2016 the 1st applicant brought the present amended application for injunction, revocation of the grant and the cancellation of the letters that followed the 1st respondent's subdivision of the parcel of land. His grievance was that the 1st respondent had subdivided the parcel of land into Dagoretti/Riruta/6339, 6340, 6341, 6342 and 6343 without reference to him and without providing for him. She had registered Dagoretti/Riruta/6339 in the name of Simon Thairu Mbatia, Dagoretti/Riruta/6340 in the name of Elizabeth Njeri Mbatia, Jane Wanjiru Mbatia and Jennifer Wanjiku; Dagoretti Riruta/6341 in the name of Elizabeth Njeri Mbatia; Dagoretti/Riruta/6343 in the name of Gladys Njeri Mwangi; and Dagoretti/Riruta/6341 in the name of Joan Kariuki Mbatia. That had left Dagoretti/Riruta/6342 which was in her name. In answer to the application, she stated that she had distributed the estate as indicated in the certificate of confirmation, and that she had kept 6342 for the 1st applicant. It is clear from her affidavit that all her children, except the 1st applicant, had participated in the sharing. The 1st applicant complained of this exclusion. He stated that he had for the last 28 years been living with his family on what is now 6340, and now he was being evicted from there. According to the respondents, the 1st applicant was stubborn and that his problem was that he did not want his sisters to be provided for. It is, however, clear that no reference was made to him when the 1st respondent subdivided the deceased's land, which she held in trust for the beneficiaries. She unilaterally decided what the applicant should get.

5. I have considered the application as amended and the responses by the respondents. I have also considered the submissions by Mr. Nyakiangana for the applicants and Mr. Kinyanjui for the respondents. To start with, the 1st respondent claimed that she shared the parcel in accordance with the wishes the deceased had expressed before he died. However, when she filed the petition she stated that the deceased had died intestate. Until she distributed the estate the way she had done she had not indicated that the deceased had left any wishes. She did not provide any opportunity for the said wishes to be tested.

6. But more important, upon the confirmation of the grant the 1st respondent became a trustee for all the beneficiaries of the estate of the deceased. She was, in that capacity, registered in respect of that land. She stood in a fiduciary position with regard to the trust property and the beneficiaries. She was not allowed to act in any manner that was prejudicial to the interests of the beneficiaries, or any of them. In this case, she acted in a manner that was prejudicial to the interests of the 1st applicant by subdividing the parcel without reference to him, and purporting to allocate him a portion away from where he had settled with his family for over 28 years. She acted contrary to the interests of the 1st applicant when she sat with the rest of the family and decided who gets which portion. It is because of this abuse of this fiduciary position that I order the cancellation of titles Dagoretti/Riruta/6339, 6340, 6341, 6342 and 6323 and order that the portions revert to Dagoretti/Riruta/6454 in the name of the 1st respondent.

7. Parties have sixty (60) days from today to agree on a fresh formula of distribution, failing which each beneficiary shall within fourteen (14) days file and serve an affidavit indicating how he/she wants the

estate to be distributed, and thereafter the matter shall be mentioned for further directions on hearing.

8. In the meantime, an injunction shall issue against the 1st respondent and/or the other beneficiaries restraining them from disposing of, or in any other manner, alienating parcel 6454, or any portion of it.

DATED, DELIVERED and SIGNED at NAIROBI this 17TH day of MAY 2017.

A.O. MUCHELULE

JUDGE