



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 1205 OF 2011

IN THE MATTER OF THE ESTATE OF ELIZABETH WANGUI KARIUKI (DECEASED)

RULING

ELIZABETH WANGUI KARIUKI AND RUTH WARIGIA KARIMI (hereinafter Elizabeth and Ruth) were the registered proprietors of the land Parcel no. RUGURU/GACHIKA/73 approximately 4.2 acres, which they held in equal shares. They passed away on 28th February 2004 and 1st August 2010 respectively. According to the letter to the D.R. by the Chief Kiganjo Location, Elizabeth was survived by Winn Wairimu, Jackson Muriithi Karimi, Lucy Wangari Karimi, Pauline Wangui Kariuki, Patrick Githaiga Kariuki, and Ruth, by Teresa Wambui, Geoffrey Maina, Charles Mwangi, Joyce Wairimu, Joseph Njaramba and David Wambugu.

Pauline Wangui Kariuki filed this succession cause on behalf of the children of Elizabeth so that they could get their half share of the property. She cited Ruth's children by citation filed on the 17th November 2011. From the record, there was no response.

On 4th July 2012 Pauline Wangui Kariuki was issued with grant of letters of administration Intestate.

The confirmation of grant intestate was made on the 27th September 2013 whereby Pauline Wangui Kariuki would get half share of the L.R RUGURU/GACHIKA/73.

By a Summons dated 17th October 2014 and filed on the 23rd October 2014, the Petitioner sought orders under rules 49, 59 and 73 of the P&A Rules made under the Law of Succession Act Cap 160, sought orders authorizing the DR to sign and execute all the necessary forms for transfer, that is application for partition, mutation forms among others so as to give effect to the grant issued on the 14th July 2012 and confirmed on the 27th September 2013. And further that the pin number, copy of ID coloured passport photos and signatures of the deceased Ruth Warigia Karimi be dispensed with since beneficiaries of her estate had declined to participate in the succession cause.

In the affidavit in support of this application the applicant explained that the said Elizabeth and Ruth were cowives, and she was from the first house. That she had cited and served members of the second house with the summons for confirmation of grant but they had not filed response or any protest. In the affidavit in support in verification of the proposed citation to accept or refuse letters of administration intestate, the Petitioner deponed that the family of Ruth were in no hurry to file succession nor were they interested in a joint petition. In the affidavit in support of summons for confirmation of grant, the applicant set out the deceased's estate to be half share of Ruguru/Gachika/ 73 and the beneficiaries to be herself, Winn Wairimu, Jackson Muriithi Karimi, Lucy Wangari Karimi and Patrick Githaiga Kariuki, and that the half share would be transferred to the applicant.

The record will show that there were issues with the service upon the other family. The affidavit of service dated 13th June 2013 indicates that Geoffrey Maina was served and he signed the hearing notice for 13th June 2017 on 6th June 2017.

The only issue for determination is whether the application 17th October 2014 has any merit.

Rule 49 of the P&A Rules makes provision for applications not otherwise provided for in the following terms:

A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.

The application for the DR to execute documents for purposes of effecting the grant in lieu of a party or other person is not specifically provided for. Rule 59 provides for the form of proceedings while making applications, while rule 73 saves the inherent powers of court;

...to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The petitioner has made it very clear that she and her siblings are interested only in the half share their mother is entitled to in Ruguru/Gachika/73, whose search clearly shows that the deceased owned it in equal shares. The application seeks to have the parcel of land divided in half. The beneficiaries of the estate of RUTH WARIGIA KARIMI will still have their share of their mother's property and they can always file succession over her half share. They are well aware of this process but have not shown any interest in the current proceedings.

I think it is only fair and just that the petitioner gets the orders sought.

Therefore the application dated 17th October 2017 be and is hereby is allowed. I make the following orders; that,

1. The Deputy Registrar do sign and execute all the necessary forms for transfer, that is application for partition, mutation forms among others with regard to Ruguru/Gachika/73 so as to give effect to the grant issued on the 14th July 2012 and confirmed on the 27th September 2013, transferring half share to the Petitioner, and the other half share to remain in the name of RUTH WARIGIA KARIMI.

2. Costs in the cause

Dated and signed this 25th July 2017

Teresia Matheka

Judge

Delivered this 27th Day of July 2017 at Nyeri

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Judge

In the Presence of

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Court Assistant.....