



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 142 OF 2003

IN THE MATTER OF THE ESTATE OF JOHNSON MUTURI MUCHEMI (DECEASED)

VIOLET WAMBUI MUTURIAPPLICANT

V E R S U S

REBECCA NJERI MUTURIRESPONDENT

R U L I N G

1. By her application dated 17th August 2015, Violet Wambui Muturi, the Applicant, came to court by way of Summons, seeking orders that the Grant of Letters of Administration to Violet Wambui Muturi and Rebeccah Njeri Muturi made on the 2nd May, 2003 and confirmed on the 29th day of September, 2004, be revoked and/or annulled.

2. The application is premised on grounds that the distribution which has so far been undertaken by one administratrix, Rebeccah Njeri Muturi (hereinafter the Respondent) without the participation and/or consultation with the co-administratrix, Violet Wambui Muturi (hereinafter the Applicant), has been unfair and contrary to the terms set out in the certificate of confirmation of Grant issued on 29th September 2014. That the Respondent has unfairly and unequally distributed, and proceeded to market for sale, the portions that she has allocated to herself with the sole intention of gaining an unfair material advantage over the Applicant.

3. The Applicant prays that the Respondent be compelled to surrender the titles she acquired after the subdivision, if at all. That in the alternative, the court do supervise and order that the Estate of the deceased be redistributed in accordance with the schedule laid out in the certificate of confirmation of grant issued on 29th September, 2004 having due regard to the size and value of the Estate.

4. The deceased to whose Estate these proceedings relate is Johnson Muturi Muchemi who died intestate and domiciled in Kenya on 13th May 2002. Grant of Letters of Administration intestate of all his Estate was made to his two widows Violet Wambui Muturi and Rebeccah Njeri Muturi on 2nd May 2003 and confirmed on 29th September 2004. Further that distribution of all the assets of the Estate as listed in the schedule to the Certificate of confirmation of Grant was effected save for the property described as L.R. No. 3057 Ol-Joro-Orok.

5. On 10th February, 2006, the Applicant who was leaving the country for the United States of America duly executed and registered a Power of Attorney giving Richard Wainaina Muturi, (hereinafter the

Attorney) authority to represent her in the proceedings herein. On 17th August 2015 the Attorney swore an affidavit on behalf of the Applicant in support of her application and deposed that he is the son of the deceased, and that the Applicant is his mother who was married to the deceased in 1968, while the Respondent was married in 1978. That the certificate of confirmation provided that the net Estate will vest in the two widows' households in equal proportions, so that each widow shall hold the accruing respective portion as life tenant and as trustee for their respective children.

6. The Attorney further averred that sometime in August 2005, the Respondent and the Applicant met at a surveyor's office in Nyahururu with the intent of settling the parcel No. Nyandarua/Oljoro Orok West/3057. That the Applicant intended that the parcel would be divided equally between the two widows both in size and value, but the Respondent rejected the proposal and insisted that the portion with developments, thereof, should belong to her. The subdivision did not therefore go on. In August 2008, the Respondent obtained an order in court allowing her to solely execute all the necessary and required transfers and other documents to facilitate the distribution of the said property being title No. Nyandarua/Oljoro Orok West/3057.

7. The Attorney asserts that when the Applicant returned to Kenya from the United States to bury her son, they held a family meeting between himself, the deceased's brother one Kariuki Muchemi, and the Respondent. That in the meeting the Respondent did not disclose to them that on 4th August, 2008, she had been granted orders by the court to act solely, nor that she had already subdivided the property Title No. Nyandarua/Oljoro Orok West/3057 into three portions. The Attorney states that he found out about the subdivision of the parcel of land into three portions being Title No. Nyandarua/Oljoro Orok West/5191, 5192 and 5193, when he did an official search.

8. The Attorney further contends that the Respondent allocated herself the portion that was reserved for the family grave yard and which was meant to be in the joint names of the Applicant and the Respondent. That according to an agreement reached between the two families, each house would forfeit a total of 0.25 acres to serve as the family yard. That the Respondent has refused to set aside the land meant for the family grave yard. That a valuation on the parcel of land in the presence of the Respondent and the Attorney, showed that the portion claimed by the Respondent was valued at Kshs.9,700,000/= while the Applicant's portion was valued at Kshs.7,500,000/=.

9. The Attorney therefore urged the court to compel the Respondent to distribute the Estate of the deceased in accordance with the certificate of grant as issued. In the alternative the court to supervise the said distribution to ensure that justice is done.

10. The Respondent opposed the application by her affidavit sworn on 14th October, 2015 in which she deposed that she got married to the deceased in 1976 and was blessed with four children. That the Administrators were required to apply for Land Control Board Consent for sub-division of Title No. Nyandarua/Oljoro Orok West/3057. That it is not true that the Applicant left the title thereto with the surveyor. She avers that the Applicant left the country for the United States of America before the date of the board sitting and did not send any representative to appear on her behalf.

11. The Respondent avers that the Attorney intimated to her that he would not act for the Applicant in the transaction as he had no Power of Attorney to do so. That her failure to inform the Applicant about her intention to act solely was because she did not have her contact nor her physical address and neither could she serve the Attorney as he was neither the Respondent nor an administrator of the deceased's Estate. She denies having met with the Attorney at Ol'joro Orok West Farm in November 2014 or holding discussions with him. That all along the Attorney knew of the sub-division of the parcel of land as he is the one who paid the survey fees.

12. The Respondent asserts that the survey was done in the presence of the Attorney, and that he is the one who arranged for the Surveyor's visit and fixing of beacons to mark the respective boundaries of the resultant sub-divisions. She confirms that the parcel of land in question was sub-divided into three portions which are all equal in acreage but she denies that there was an agreement to set aside a portion of land to act as a family graveyard, nor is it contained in the Certificate of Confirmation of Grant. The

Respondent argues that the permanent dwelling house in her occupation constitutes her matrimonial home where she has lived for the last 39 years and which she has improved extensively by undertaking various renovations. That the Applicant has never lived in the said house nor claimed entitlement thereto.

13. The court has considered the averments of both parties, submissions of the Respondent, the proceedings on record and the authorities referred to. From paragraph 6 of the affidavit in support of the summons for confirmation of the grant the distribution was agreed as follows:

- a. **Each of the households to receive ½ of the net intestate estate.**
- b. **Violet Wambui Muturi and Rebeccah Njeri Muturi to have a life interest in the net intestate estate of their respective household.**
- c. **The children of Violet Wambui Muturi namely:-**
 - i. **Richard Wainaina Muturi**
 - ii. **Joseph Irungu Muturi**
 - iii. **Jacqueline Wangui Muturi**

To each receive 16.6% share of the net intestate estate of the properties listed below.

- d. **The children of Rebeccah Njeri Muturi namely:-**
 - i. **Alice Wairimu**
 - ii. **Mary Wangui Muturi**
 - iii. **William Muchemi Muturi**
 - iv. **Asaph Mwangi Muturi**

To receive 12.5% share of the net intestate estate of the said properties listed below:”

The inventory of all the assets of the deceased at the date of his death was as follows:

- a. L.R. No. 3057 – Ol-Joro-Rok
- b. Plot No. 46 - Moi Estate – Nyahururu Municipality
- c. L.R. No. 584 – Mukurwe-Ini- Nyeri
- d. Ban Account no. 011037348700 – Co-operative Bank Nyahururu
- e. Bank Account No. 31106838 – National Bank Kenya

14. The court notes that this is a matter in which the identification of the shares of all persons beneficially entitled to the Estate was ascertained by consent and the grant subsequently confirmed with the agreed mode of distribution of the Estate in place.

15. From the foregoing the court finds that the application dated 17th August 2015 has merit. The court is of the view however, that to revoke or annul the grant already in place will not serve the interests of the Estate since, distribution of all the assets of the Estate as listed in the schedule to the Certificate of confirmation of Grant was effected in accordance with the agreed mode of distribution save for the property described as L.R. No. 3057 Ol-Joro-Orok.

16. In the premise the court orders as follows:

- i. The titles acquired pursuant to the sub-division of L.R. No. 3057 Ol-Joro-Orok are hereby nullified and cancelled.
- ii. The Administratrix in the Estate is hereby ordered to subdivide the parcel of land known as L.R. No.3057 Ol-Joro-Orok into two portions having regard to the size and developments thereon so that the two portions shall be as nearly equal as possible in value, and each widow shall be entitled

to one portion.

iii. In the alternative to (ii) above, the Administratrix shall relinquish two of the three portions as already sub-divided and return the portion on which her matrimonial home stands, if the two portions shall be equal to the one portion together with the developments thereon.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **15th day of February 2016.**

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L. A. ACHODE

JUDGE