



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 177 OF 2013

(IN THE MATTER OF THE ESTATE OF WANGECHI WANGOMBE alias WANGECHI w/o WANGOMBE)

ANNE N. NGUMBA.....1ST PETITIONER/RESPONDENT

SHELIMITH W. MUGO.....2ND PETITIONER/RESPONDENT

VERSUS

JEREMIAH J. WANJOHI.....PROTESTOR/APPLICANT

RULING

Counsel for the applicant filed a chamber summons dated 14th January, 2016 principally seeking “to strike out or cancel the certificate of grant taken out by the petitioner/respondents and substitute it with the one taken out by the protestor/applicant.”

In the affidavit in support of the summons the applicant swore that according to the judgment delivered in this cause on 13th April, 2015, the deceased’s interest in the property referred to as **Nyeri/Municipality/Block 3/218** was limited to a ¼ share and that is the only part that formed her estate available for distribution amongst her other assets in the estate.

Contrary to the judgment of the court, so the applicant has sworn, a certificate of confirmation of grant was drawn purporting to distribute Nyeri/Municipality/Block 3/218 as if the entire property belonged to the deceased’s estate.

The respondents have opposed the application and in their replying affidavit sworn by the first respondent, they swore that this court is functus officio and the orders sought amount to an appeal. The respondents argued that their draft of the certificate of confirmation of grant was the correct version since it is consistent with the judgment of the court.

What I gather from the parties is that two drafts of the certificates of confirmation of grant have been drawn and the question is which of the two certificates is consistent with the judgment of the court.

The answer to which of the two versions of the certificates is the correct version can be found in my judgment on status and distribution of Title Number **Nyeri/Municipality/Block 3/218**. This is what I said in respect of this property:-

*Coming back to the property in issue, the protestor, on his part, swore that this property was initially registered as **LR. No. Nyeri/Municipality/Block 111/84** and that it only evolved into **LR.***

No. Nyeri/Municipality/Block 3/218 when it was divided and registered as distinct parcels of which this latter parcel is one; this information by the protestor was not controverted by the petitioners and, therefore, there is no reason to doubt it; in any event, there is nothing on record to suggest that the parcel referred to as **LR. No. Nyeri/Municipality/Block 111/84** still exists.

A certificate of official search in respect of title number **Nyeri/Municipality/Block 3/218** filed in court on 8th March, 2013 shows that this particular property is registered in the names of four people; they are the deceased, **Wangechi Wangombe, Jeremiah Joshua Wanjohi, Hezron Wangai Wangombe and James Ngotho Wangombe**. The registration of this property in the proprietors' names was effected on 4th April, 2001, more than a year after the deceased had written her will. It is therefore probable as suggested by the protestor that this property was initially registered as **LR. No. Nyeri/Municipality/Block 111/84** hence the deceased's description of it as such in her will; it is also probable, as stated by the protestor, that this property was subdivided and the deceased's interest in that property was ultimately registered in one of the sub-divisions registered as **Title Number Nyeri/Municipality/Block 3/218**. It follows therefore reference the deceased's interest in "**plot number Nyeri/Municipality/Block 111/84**" in the deceased's will must have meant her interest in **Title Number Nyeri/Municipality/Block 3/218**. It is this interest that is subject to distribution and this court can do no better than effect the deceased's wishes in respect of this particular interest which is that the deceased's share in **Title Number Nyeri/Municipality/Block 3/218** shall be shared equally between her children, to wit:-

1. **Jeremiah Wanjohi**
2. **Maryanne Ngumba**
3. **Grace Wanjiru**
4. **Shelmith Wangari Mugo**

(underlining mine)

The judgment was clear that:-

- a. the deceased was one of the four registered proprietors of the **Title Number Nyeri/Municipality/Block 3/218**;
- b. it is the deceased's share in **Title Number Nyeri/Municipality/Block 3/218** that was subject to distribution as her estate and not the entire property.

The deceased only owned a quarter share in **Title Number Nyeri/Municipality/Block 3/218** and therefore reference to distribution of this property amongst the listed persons can only have meant the distribution of the deceased's share which is a quarter of **Title Number Nyeri/Municipality/Block 3/218**. I therefore direct the deputy registrar to draw and issue the certificate of confirmation in these terms.

The drafts drawn by the respective parties and submitted to court for signature are of no consequence and are hereby expunged from the record; only the certificate drawn and issued by this court shall be considered a valid certificate of confirmation of grant.

Signed, dated and delivered in open court this 18th day of March, 2016

Ngaah Jairus

JUDGE