



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 531 OF 1995

IN THE MATTER OF THE ESTATE OF EDWARD KAMAU KARIUKI (DECEASED)

SERAH WAIRIMU KAMAU.....APPLICANT

VERSUS

JOSEPH NDUNG'U KAMAU.....RESPONDENT

RULING

This ruling is in respect of the application dated 31st October, 2014. the orders sought are:

1. Spent

2. Spent

3. That this honourable court be pleased to order cancellation of all titles arising from subdivision of land parcel number BAHATI/KABATINI BLOCK 1/1869 and that the same revert to as it is per the confirmed grant. The said titles include

i. Bahati/Kabatini Block 1/1425

ii. Bahati/Kabatini Block 1/14220

iii. Bahati/Kabatini Block 1/14221

iv. Bahati/Kabatini Block 1/14643

v. Bahati/Kabatini Block 1/11833

vi. Bahati/Kabatini Block 1/11694

vii. Bahati/Kabatini Block 1/11696

viii. Bahati/Kabatini Block 1/11832

4. That costs of the application be provided for.

The application is supported by the affidavit of Serah Wairimu Kamau and on grounds as seen on

the face of the application namely:

- a) That the Applicant is an administrator of the estate of the deceased.
- b) That this honourable court issued a certificate of grant on 3rd February, 2010.
- c) That the co-administrator, Joseph Ndung'u Kamau had previously refused to surrender the original title in respect of the land No. Bahati/Kabatini Block 1/1869, to facilitate sub-division as per the grant.
- d) That the court ordered that the same be dispensed with to facilitate sub-division as per the grant.
- e) That the co-administrator, Joseph Ndung'u Kamau has gone ahead to fraudulently and without the consent and/or involvement of the petitioner subdivided the land into several portions
- f) That the land has been sub-divided into the following plots:
 - i. Bahati/Kabatini Block 1/1425
 - ii. Bahati/Kabatini Block 1/14220
 - iii. Bahati/Kabatini Block 1/14221
 - iv. Bahati/Kabatini Block 1/14643
 - v. Bahati/Kabatini Block 1/11833
 - vi. Bahati/Kabatini Block 1/11694
 - vii. Bahati/Kabatini Block 1/11696
 - viii. Bahati/Kabatini Block 1/11832
- g) The sub-division has been done contrary to the grant which vested half of the land to the Applicant.

The gist of the supporting affidavit and supporting grounds is that by a confirmed rectified grant as seen in the annexed Certificate of Confirmation of Grant, parcel of land No. Bahati/Kabatini Block 1/1869 was to be sub-divided into two (2) equal shares with the applicant's co-administrator Joseph Ndung'u Kamau holding one share and the Applicant holding the other share.

An application challenging the confirmation was later filed and dismissed and an order to that effect is annexed.

The Applicant while trying to give effect to the orders of court by having the land sub-divided into two (2) and registered, found out at the Lands Registry that the said land had been subdivided into eight (8) portions and title deeds issued to 3rd parties.

In a replying affidavit, the Respondent has started with what appears to be a blatant lie in paragraph 3 thereof where he asserts that the confirmed grant directed that all the properties of the deceased be held jointly between the respondent and the applicant. This position is rebutted by the annexed confirmed grant that shows that in respect of parcel No. Bahati/Kabatini Block 1/1869, the Applicant and the Respondent were to hold $\frac{1}{2}$ share each.

It is further deponed by the Respondent that the Applicant has failed to produce all the titles so that each family can get half a share of their entitlement and it is suspected that the Applicant has either transferred the titles or sold to third parties.

The Respondent acknowledges subdividing parcel No. Bahati/Kabatini Block 1/1869 into 50 X 100 feet plots. The Respondent seeks that the Applicant be compelled to produce other titles to give effect to orders of the court on distribution.

This is a straight forward application. It is a classic example of impunity in the disregard of court orders and is an affront to the rule of law and all tenets of justice.

The confirmed grant is clear in what share each of the administrator was to hold in Bahati/Kabatini Block 1/1869. It was to be a ½ share each. The Respondent has gone ahead and sub-divided the land into 50 X 100 feet plots. He admits as much. He purports that this is because the Applicant was reluctant to surrender other titles.

Whether other titles were surrendered or not, the orders of the court are not varied or set aside. The remedy to the Respondent would be in seeking court's intervention to compel the Applicant to comply with the court orders if at all.

The Respondent has blatantly abused the powers of an administrator and the act in addition to giving rise to a cognisable offence is one that under **Section 94** of the **Law of Succession Act** should make the Respondent liable to make good any loss or damage occasioned to the estate.

Consequently, the application herein is with merit and necessary for the purposes of giving effect to the orders of this court.

I grant prayer 3 of the application with costs to the Applicant.

Dated, Signed and Delivered at Nakuru this 16th day of March, 2016.

A. K. NDUNG'U

JUDGE