



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2958 OF 2003

IN THE MATTER OF THE ESTATE OF GITAU ITEMO – (DECEASED)

MARY WAITHERA GITAU.....PLAINTIFF/APPLICANT

VERSUS

MARY NJERI GITAU.....RESPONDENT

RULING

1. On the 8/6/16 Mary Waithira Gitau the applicant herein filed summons under Rule 49 of the Probate and administration Rules 1 Cap 160. She seeks the following orders;

i. That pending the hearing and determination of this application inter partes, a temporary injunction do issue restraining the respondent from selling, leasing, charging, or in any other way howsoever disposing to third parties, the property known as Ngenda/Karuri/814.

ii. That the title deed for the property known as Ngenda/Karuri/84 being the entire estate of Gitau Itemo (deceased) issued on 23rd Mary 2003 to Mary Njeri Gitau be and is hereby revoked and cancelled.

iii. That the Registrar of Titles be and is hereby directed to execute all relevant documents in place of Mary Njeri Gitau to facilitate the subdivision of the property known as Ngenda/Karuri/814 being the entire estate of Gitau Itemo (deceased) into two parcels and to issue separate title deeds for each the resulting parcels of land to Mary Waithira Gitau and Mary Njeri Gitau respectively; in accordance with the mode of distribution set out in the certificate of confirmation of grant issued to Mary Waithira Gitau and Mary Njeri Gitau on 31st January 2014.

iv. That the relevant District Land Surveyor be and is hereby directed to demarcate the resultant subdivided parcels of land and install new beacons.

v. That all the costs associated with the subdivision, demarcation, registration and related costs to ensure that the prayers 2, 3 and 4 are successfully implemented shall be borne by Mary Waithira Gitau and Mary Njeri Gitau Equally.

2. She avers that the certificate of confirmation of grant setting out the mode of distribution of the deceased's estate was issued on the 31/1/14. That by the said date Mary Njeri Gitau the respondent had procured the title deed for the property known as Ngenda/Karuri/84 being the entire estate of the deceased in her sole name on the 23/5/03. That the deceased's estate cannot be determined in terms of the certificate of confirmation of grant issued on the 31st January 2014 unless the title deed issued to Mary

Njeri Gitua is first cancelled. That there is danger that the respondent may dispose of the said property to their parties hence rendering the certificate of grant issued on the 31/1/14 nugatory. That she wishes to obtain a title deed for the portion where she lives with her children in accordance with the certificate of confirmation of grant but the respondent has declined to return it for cancellation, she is holding it, nor has she cooperated in ensuring the mode of distribution of the property as set out in the certificate of confirmation of grant.

3. The respondent was served with the application dated 6/5/16 on the 10/6/16 by a process server called Don Ochando. He depones that the respondent and the applicant live in the same compound and that it is the applicant's son who identified the respondent. That he served her with the application she acknowledge receipt but declined to sign.

4. The applicant's averments have not been challenged. I have carefully perused the court file. I note that on the 20th February 2007 Justice Alouch as she then was directed that the registry issues a grant in the names of Mary Njeri Gitau jointly with Mary Waithira Gitau and that the two be at liberty to move the court for confirmation of the grant after agreeing on the mode of distribution. Subsequently on the 38/4/09 an application to confirm the grant was made by the 2 administrators and Justice Musyoka ruled that the distribution be as was proposed. The grant was confirmed. The estate was to be distributed as proposed.

5. It is the applicant's contention that nothing has happened since then and that her fears are that the respondent is likely to dispose of the property since she is the one currently holding the title of parcel land Ngenda/Karuri/814.

6. The certificate of confirmation of grant states that the deceased's estate is to be distributed as follows; Mary Waithira Gitau 2.15 acres and Mary Njeri Gitau 3.13 acres of parcel of land No. Ngenda /Karuri/814. What has been deponed has not challenged the respondent. It is evident that the respondent has taken no action to process a title for the applicant. Her fears are justified and the orders sought are warranted. I therefore grant the following orders;

- i. That the title deed for the property known as Ngenda/Karuri/814 being the entire estate of Gitau Itemo (deceased) issued on 23rd to Mary Njeri Gitau is hereby cancelled.
- ii. That the Registrar of Titles is hereby directed to execute all relevant documents in place of Mary Njeri Gitau to facilitate the subdivision of the property known as Ngenda/Karuri/814 being the entire estate of Gitau Itemo (deceased) into two parcels and to issue separate title deeds for each the resulting parcels of land to Mary Waithira Gitau and Mary Njeri Gitau respectively; in accordance with the mode of distribution set out in the certificate of confirmation of grant issued to Mary Waithira Gitau and Mary Njeri Gitau on 31st January 2014.
- iii. That the relevant District land surveyor be and is hereby directed to demarcate the resultant subdivided parcels of land and install new beacons.
- iv. That all the costs associated with the subdivision, demarcation, registration and related costs to ensure that the prayers 2 ,3 and 4 are successfully implemented shall be borne by Mary Waithira Gitau and Mary Njeri Gitau Equally.
- v. That costs of this application be in the cause.

Dated, signed and delivered this 22nd Day of **September 2016**

R. E. OUGO

JUDGE

In the presence of:

.....For the Applicant

.....For the Respondent

Charity

Court Clerk