



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3300 OF 2005

IN THE MATTER OF THE ESTATE OF KINYANJUI WANGURU (DECEASED)

JANET WANJIKU NJOROGE.....PETITIONER

VERSUS

KAMAU KINYANJUI KAMAU.....RESPONDENT

RULING

1. The deceased Kinyanjui Wanguru died intestate on 19th February 1982, at Kikuyu in Kiambu. He left as his estate his interest in Loc.Muguga/Jet Scheme/554 which is currently registered in the name of the Government. He was survived by three sons, two daughters and six daughters in-law. On 28th November 2005 his son Kamau Kinyanjui Kamau (the respondent) and his daughters in-law Mwihaki Kariuki Kamau and Janet Wanjiku Njoroge (the applicant) petitioned for the grant of letters of administration intestate. She got the grant which was confirmed on 21st November 2006. The application to confirm the grant was filed by the three administrators, and all the other beneficiaries consented to the proposed mode of distribution. The agreed mode was that the parcel be registered in the names of administrators for their own behalf and in trust for Wangui Kamau, Joyce Wanjiru Kamau, Patrick Wanjiku Kamau and Kariuki Kinyanjui in equal shares.

2. The applicant and Mwihaki Kariuki Kamau sought to actualise certificate and got the land surveyed for distribution. The respondent declined to participate or execute any documents to effect the sharing. This application was filed to dispense with signature or to get the Deputy Registrar sign on his behalf.

3. The respondent filed a replying affidavit to say that the mode of distribution that the applicant and her co-administrators have adopted does not affect what was agreed upon.

4. He stated:-

“4) THAT it is true I have refused to execute the sub-division plan drawn on 18th July 2011 by Kiambu District Surveyors Officer as the same does not reflect the actual intention and spirit of the family and the court order confirming the grant.

5) THAT the confirmation of grant proposes eight equal portions which was not the actual intention of the beneficiaries but that notwithstanding my co-administrators proposed subdivision plan is for three portions.

6) THAT on the ground beneficiaries have subdivided the land into six equal portions where each family of the deceased sons is settled which reflects the actual intention and spirit of the beneficiaries.

7) THAT the survey was only supposed to confirm the six (6) portions are equal and formalise what is on the ground to activate actual subdivision and registration of the six portions and not to alter the same or disinherit some of the beneficiaries.”

5. The proposed survey plan by the applicants shows that they intend to subdivide the parcel into eight (8) equal portions, each of which shall go to each administrator and each of the other five beneficiaries. This is what the parties agreed to during the confirmation of the grant. The respondent cannot resile from that agreement. He has no application seeking to vary and or set aside the agreement.

6. I allow the application, and direct that within 30 days the respondent signs the survey plan failing which the Deputy Registrar shall sign on his behalf. He (the respondent) shall pay the costs of this application.

DATED and DELIVERED at NAIROBI this 8th December 2015.

A.O. MUCHELULE

JUDGE