

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 283 OF 2005

IN THE MATTER OF THE EDWARD GICHURA NGANGA (DECEASED)

RULING

1. The application dated 8th February 2012 seeks an order that Allan Gichura Ng'ang'a, the grandson of the deceased Edward Gichura Nganga be joined in these succession proceedings as he intends to claim $\frac{1}{4}$ of an acre comprised in land title number Kabete/Lower Kabete/910 which is one of the two parcels of land that constitute the estate of the said deceased.
2. The deceased died intestate on 1st August 1993 in Kiambu District. He was survived by a daughter, namely, Hannah Wambui Kinyanjui, and a son, Peter Nganga Gichura, who later died on 9th July 2003 and was survived by his wife, Esther Wambui Nganga, who is entitled to inherit her husband's legacy. A grant of letters of administration was made to Hannah Wambui Kinyanjui.
3. Following a summons dated 23rd March 2007 by Hannah Wambui Kinyanjui for confirmation of the grant the court confirmed the grant on 3rd July 2007 and a certificate of confirmation of grant dated 3rd July 2007 was issued showing that the estate comprising land titles to Kabete/Lower Kabete/910 and 911 was distributed in equal shares to Hannah Wambui Kinyanjui and Esther Wambui Nganga.
4. Subsequently, the deceased's grandson, Allan Gichura Nganga, made the application dated 8th February 2012. Hannah Wambui Kinyanjui filed a replying affidavit sworn on 13th March 2012 in opposition to the application. Both advocate Nganga Mbugua, for the intended interested party, and advocate B.M. Onindo, for the respondent, appeared before GBM Kariuki J. on 20th June 2012 and made their rival submissions which I have considered.
5. Mr. Mbugua told the court that his client, the deceased's grandson had built a home on $\frac{1}{4}$ of an acre on plot No. Kabete/Lower Kabete/910 and that he lives there with his family. He had caused a caution to be registered against both parcels numbers Kabete/Lower Kabete/910 and 911 but on application by the administratrix of the estate, the court removed the caution on 28th January 2009 and a formal order removing the caution was extracted and issued on 11th February 2009. Replying on his client's affidavit, Mr. Mbugua urged the court to grant the order seeking to make his client a party in the succession proceedings.
6. On his part, Mr. Onindo opposed the application and relying on the replying affidavit by his client, Hannah Wambui Kinyanjui, the administratrix, contended that the deceased's grandson was not entitled to the order sought. He submitted that as the father of the deceased's grandson was allocated his share of inheritance, the grandson cannot go back for more from the share of the sister to his father, who is his aunt. That would work out injustice as the distribution to the two children of the deceased was equal.
7. I have perused the application and the filed affidavits and I have given due consideration to the same and to the submissions made by counsel. For starters, the estate of the deceased was equally distributed between the son and daughter of the deceased, these being the only children and beneficiaries. The applicant, being a child of one of the two beneficiaries must look to his parent for land. He cannot look to his aunt who got an equal share to his own parent. That would be

unjust and inequitable. He has not demonstrated any legal basis on which he can be made a party to these succession proceedings, much less a beneficiary.

8. I find that the application dated 8th February 2012 has no merit. It exhibits greed and is redolent of unfairness. To allow the applicant to get the order he seeks is to aid him to perpetrate unfairness. The application is hereby dismissed as lacking merit. The costs of the application shall be paid by Allan Gichura Nganga to Hannah Wambui Kinyanjui.

9. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 25th DAY OF April 2014.

W. MUSYOKA

JUDGE

No appearance for the applicant.

In the presence of Mrs. Waiganjo advocate for the respondent.