

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.143 OF 1990

IN THE MATTER OF THE ESTATE OF WANJOHI KAMAU KIBE (DECEASED)

MARGARET NYAMBURA WANJOHI.....APPLICANT

VERSUS

JOSHUA KIBE WANJOHI.....RESPONDENT

JUDGMENT

Margaret Nyambura Wanjohi, the Applicant herein moved this court by summons for revocation of grant made pursuant to **Section 76(a)** of the **Law of Succession Act** and **Rules 44(1), 49 & 73** of the **Probate and Administration Rules** seeking several orders from this court. The orders directed at the Respondent were as follows:

The certificate of confirmation of grant issued by this court on 2nd November 1990 in so far as it related to LR. No. Githunguri/Githunguri/444 and 26 acres in Ngeteti Farm in Gilgil (hereinafter referred to as the suit properties) be set aside. The Applicant further prayed that the registration of the Respondent as the sole owner of the two parcels of land be cancelled and alternatively the registration do revert back to the name of the deceased or it be registered in the joint names of all the beneficiaries entitled to inherit the same. The application was supported by grounds stated on the face of the application and the annexed affidavit of the Applicant. The application was opposed. The Respondent filed a replying affidavit in opposition to the application. He stated that there was no basis at all for the court to set aside his registration as the owner of the two parcels of land. He was of the view that the Applicant was estopped from challenging the said distribution because they failed to attend court when the case was listed for confirmation of grant. He urged the court to dismiss the application with costs.

Directions were issued by the court to the effect that the matters in dispute be heard and disposed of by the court hearing *viva voce* evidence. On the date scheduled for the hearing of the case (*i.e.* 6th March 2013), it is only the Applicant who was present in court. The court was satisfied that the Respondent had been duly served. It ordered the Applicant to proceed with her case, the absence of the Respondent notwithstanding. The Applicant testified that Wanjohi Kamau Kibe, the deceased in this case was her husband. He was married to two wives, herself and one Teresia Wambui Wanjohi. Upon his death, the two families agreed to distribute the properties that comprise the estate of the deceased. The Applicant and her children were entitled to inherit the suit properties. Her co-wife got other properties. There was no dispute between the two wives in regard to the distribution of the properties.

The dispute is between the Applicant and the Respondent, who is her son. The Applicant testified that she was blessed with seven (7) children namely Stephen Gathumbi, George Njangiru, Rose Wanjiru, Joshua Kibe (the Respondent), Jacob Kuria, Isaac Kamau and Salome Wanjiru. The Applicant complained that she and her children were excluded from benefiting from suit properties despite the fact that they were in occupation of the suit properties. She testified that the Respondent did not inform her when he came to court to petition the court to administer the estate of the deceased. She explained that she later learnt that the deceased had left behind a written Will dated 1st August 1989. She told the court that she was not aware of the contents of this Will. It was her case that the suit parcels of land should be distributed equally to the beneficiaries. She asked the court to condemn the Respondent to pay the cost of the suit.

This court has carefully considered the facts of this case. The deceased wrote a Will dated 1st August

1989. Clause 6(a) of the Will provides thus:

“To my son, JOSHUA KIBE WANJOHI; the entire parcel of land known as Githunguri/Githunguri/444 together with 26 acres of land forming the entire shares of Ngeteti Farmers Company Ltd – GILGIL to hold for himself and as a trustee for Margaret Nyambura Wanjohi; Daniel Ruiru; Jacob Kuria and Isaac Kamau all in equal shares.”

When the certificate for confirmation of grant was issued, it did not reflect the above position. Instead, it provided that Joshua Kibe Wanjohi had inherited the entire share in LR. No. Githunguri/Githunguri/444 while the 26 acres in Ngeteti Farmers in Gilgil was to be shared equally between the Respondent, Margaret Nyambura Wanjohi, Daniel Ruiru, Jacob Kuria and Isaac Kamau. In his replying affidavit, the Respondent stated that the above distribution as contained in the certificate of confirmation of grant should stand because the Applicant had not objected to it.

It was evident from the above facts that the Respondent acted contrary to the wishes of the deceased when he registered himself solely as the owner of the Githunguri parcel of land. The Will clearly provided that he was to be so registered as a trustee for his mother and his siblings. Instead, the Respondent appropriated the entire parcel of land to the exclusion of his mother and siblings. This court therefore holds that the Applicant established a case for this court to revoke the portion of the certificate of confirmation of grant which was issued by this court on 2nd November 1990 in so far as it touches on the suit parcels of land. Instead, the suit parcels of land shall be distributed as was proposed by the Applicant. LR. No. Githunguri/Githunguri/444 measuring 4.6 hectares (approximately 11 acres) shall be distributed equally between the Applicant and her seven (7) children (including the Respondent). Each beneficiary shall therefore inherit 0.575 hectares. In respect of Ngeteti Farmers Gilgil, the same shall be distributed equally between the Applicant and her seven (7) children (including the Respondent). Each beneficiary shall get 3.5 acres. The respective portions of each beneficiary shall be reduced pro-rata to take into account of public utilities such as access roads. The title issued to the Respondent pursuant to the previous certificate of confirmation of grant is ordered cancelled. It shall revert back to the name of the deceased pending distribution as ordered by the court. The said certificate of confirmation of grant shall be rectified to reflect the above decision of the court. The Respondent shall pay the costs of these proceedings. It is so ordered.

DATED AT NAIROBI THIS 23RD DAY OF APRIL, 2014

L. KIMARU

JUDGE