



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 4 OF 2009

**IN THE MATTER OF THE ESTATE OF NDUGIRE WANJIHIA alias NDUGIRE WANJIHIA–
(DECEASED)**

RULING

1. Ndugire Wanjihia alias Ndugire Wanjihia died on 20th June 2006. Representation to his estate was sought and obtained by Jackson Mwangi Wanjihia and Samson Kinyanyui Wanjihia in Thika CMCS No. 577 of 2006. A grant of letters of administration intestate was made to them on 27th October 2008. The grant issued Thika court was not confirmed.
2. According to the affidavit sworn in support of the petition, the petitioners were brothers of the deceased. The deceased is expressed to have been survived by five (5) persons – two daughters Judy Muthoni Ndugire and Alice Wanjiru Ndugire, two brothers Jackson Mwangi Wanjihia and Samson Kinyanjui Wanjihia and a buyer (Wanjiru Njoroge). He is said to have died possessed of a property known as Loc.2/Makomboki/1086.
3. On 6th January 2009, a summons for Revocation of grant was lodged at this registry by the alleged buyer of a portion of Loc.2/Makomboki/1086, Wanjiru Njoroge. She sought the revocation of the grant issued to the administration, and her appointment as one of the administrators of the estate. She also sought a review of the orders purportedly made by the Thika court on confirmation.
4. The application for revocation of the grant was compromised by the consent of the parties recorded on 16th February 2009 before Onyancha J, the Thika cause was recalled for handling at the High Court of Kenya Nairobi registry, the two administrators were confirmed as the administrators of the estate and it was directed that they be issued with a fresh grant. The administrators undertook to cede to Tabitha Wanjiru Njoroge her 1½ acre share of Loc.2/Makomboki/1086. The parties were given fourteen (14) days to file a proposal for the distribution of the estate.
5. In compliance with the said orders, the administrators filed a summons for confirmation of grant dated 28th July 2008. The said grant was confirmed on 27th September 2010. The scheme of distribution confirmed by the court was that the administrators were to hold 1.01 hectares of Loc.2/Makomboki/1086 in trust for the two minor children of the deceased, while the buyer, Wanjiru Njoroge, was to get 1.5 acres from the said Loc.2/Makomboki/1086.
6. On 14th February 2012, the buyer Wanjiku Njoroge lodged an application at the registry, by way of Notice of Motion, against David Macharia Wanjihia. She sought eviction orders to remove the said respondent from Loc.2/Makomboki/1086 and injunctions to keep him out of the land. There was also an order seeking removal of a caution lodged against the said title. She complains that the said respondent is in possession of Loc.2/Makomboki/1086 and that he has impeded the implementation of the confirmation orders by denying the surveyors access to the land for the purpose of subdivision.

7. The respondent to that application filed a replying affidavit sworn on 14th March 2012. He complains that he was not made aware of this cause at its commencement and that should explain why he did not come forward earlier. He claims to be a son of the deceased, Ndugire Wanjihia alias Ngugire Wanjihia, and therefore entitled to be involved in the cause and citations ought to have been issued to him. He evinces an intention to apply for revocation of the grant as grounds exist for its revocation.

8. The other argument advanced by the respondent is that besides succession he has a personal interest in the property the subject of this cause, that is to say Loc.2/Makomboki/1086. He explains that the said Loc.2/Makomboki/1086 was carved out of Loc.2/Makomboki/793. The said a Land Disputes Tribunal case between this respondent and the deceased. The respondent had allegedly sued his father because the latter wanted to deny him a share of the land having previously sold the respondent's land without his consent. The respondent's land allegedly sold by his father was Loc.2/Mairi/7. The respondent to be compensated for the loss of Loc.2/Makomboki/753. The tribunal case number 18 of 1999, held that 8 acres be carved out of Loc.2/Makomboki/753 and registered in the name of the respondent.

9. He further avers that his father caused the subdivision of Loc.2/Makomboki/753 into several portions, one of which was Loc.2/Makomboki/1086, in which he was in possession. He asserts that Loc.2/Makomboki/753 is still subject to ongoing proceedings in Nairobi **HCCC. No. 973 of 2000**. He submits that the applicant is not carefully entitled to the subject property, and the eviction orders should not even be allowed in a succession cause.

10. The applicant filed a further affidavit on 28th March 2012 sworn on even date. She asserts that the deceased was registered proprietor of Loc.2/Makomboki/1086 and that she had entered into a sole agreement with him prior to his demise, which agreement was affirmed by the administrators after his death.

11. The said application was partially argued before Mugo J. on 2nd July 2012. It was directed thereafter that the parties file written submissions. I have on record written submissions filed by the applicant and respondent. He asserts that he was a son of the deceased the subject of these proceedings, consequently he is entitled as such to a share of his estate.

12. I have carefully and exhaustively considered the papers filed by both sides in this matter. It emerges that Loc.2/Makomboki/1086 was carved out of Loc.2/Makomboki/753. The said Loc.2/Makomboki/753 was the property of Wanjihia Macharia. He was sued by the respondent in Maragua District Land Disputes Tribunal Case No. 18 of 1999, where it was decided that the respondent be given 8 acres of Loc.2/ Loc.2/Makomboki/753, which measured 9.78 hectares, was subdivided into eight portions. The eight portions or subdivisions were allocated numbers Loc.2/Makomboki/1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094 and 1095.

13. The said Wanjihia Macharia distributed the submissions as follows:-

- a. No. 1086 (110ha) to Ndugire Wanjihia,
- b. No. 1087 (0.40ha) to Julia Wairimu Wanjihia,
- c. No. 1088 (1.01ha) to Samson Kinyanjui Wanjihia,
- d. No. 1089 (0.61 ha) to Wanjihia Macharia,
- e. No. 1090 (0.81 ha) to Pauline Njeri Wanjihia,
- f. No. 1091 (0.04 ha) to Samson Kinyanjui Wanjihia,
- g. No. 1092 (2.43ha) to Beatrice Njeri Wanjihia,
- h. No. 1095 (0.60ha) to Gitonga Elija Waithera.

14. There is pending before the High Court of Kenya at Nairobi a civil suit, being **HCCC No. 973 of 2000**, our Loc.2/Makomboki/753, where the respondent has sued the proprietor of Loc.2/Makomboki/753, Wanjihia Macharia, and the beneficiaries of the subdivisions from that parcel of land. He seeks a specific order that the subdivision be nullified and the property be reverted back to Loc.2/Makomboki/753. He further seeks that the eight acres ordered in his favour by the Land Disputes Tribunal be carved out and excised from the said parcel of land. I was not able to tell from the proceedings

before me the amount status of the said suit.

15. Although the respondent claims that the deceased, Ndugire Wanjihia, was his father, the material before me appears to suggest the contrary. The respondent alleges that the person he sued in the tribunal case and in **HCCC to 973 of 2000** was his father, Ndugire Wanjihia, yet the person that he sued in both causes was Wanjihia Macharia. If indeed the deceased, Ndugire Wanjihia, was his father then that is the person who should have been named as defendant in the two causes. He similarly claims that the deceased was the proportion of Loc.2/Makomboki/753, yet the green card on record indicates the proportion as Wanjihia Macharia. I am convinced that the father of the respondent was not Ndugire Wanjihia, the deceased herein, but Wanjihia Macharia, which would make the deceased a brother of the respondent.

16. There is no doubt that Loc.2/Makomboki/1086 is the subject of the suit in **HCCC No. 973 of 2000** should the said suit be successful, Loc.2/Makomboki/1086 would cease to exist. I do not wish to dwell on the possible outcome of the said case as another court is seized of it. However, justice on the circumstances would require that the suit in **HCCC No. 973 of 2000** be determined first before the subdivisions of Loc.2/Makomboki/1086 is carried into effect.

17. The orders that I will therefore make in the circumstances are as follows:-

- a. That the application dated 14th February 2012 is hereby dismissed;
- b. That there shall be stay of the implementation of the certificate of confirmation of grant dated 27th September 2010 pending the final determination of Nairobi HCCC No. 973 of 2000; and
- c. That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May 2014.

W. MUSYOKA

JUDGE

In the presence of Ms. Kaitany advocate for the applicant.