



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO.2375(B) OF 1997**

**IN THE MATTER OF THE ESTATE OF MBUGUA KAREBE (DECEASED)**

**JOSEPH MBATIA MURIITHI.....APPLICANT**

**VERSUS**

**FRANCIS MBAKI MBUGUA..... RESPONDENT**

**RULING**

Mbugua Karebe, the deceased to whose estate these proceedings relate died on 27<sup>th</sup> June 1995. Francis Mbaki Mbugua and Nicholas Kaguora Mbugua petitioned the court to be issued with a grant of letters of administration intestate. The grant was issued to them on 22<sup>nd</sup> December 1997. It was confirmed to them on 24<sup>th</sup> January 2012. Nicholas Kaguora Mbugua is deceased. The only remaining administrator is Francis Mbaki Mbugua. In the certificate of confirmation of grant, the administrators of estate distributed a parcel of land which was originally owned by the deceased (LR. No. Dagoretti/Waithaka/58) to the beneficiaries. Among the beneficiaries of the deceased is Mary Mukuhi Mbatia. She is also deceased. Her husband, Joseph Mbatia Muriithi, is the administrator of her estate. He was issued with a grant of letters of administration intestate in respect of her estate by this court in **Succession Cause No.293 of 2012 In the matter of the estate of Mary Mukuhi Mbatia (deceased)**.

The Applicant has filed an application pursuant to the provisions of **Section 83(f)** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate and Administration Rules** seeking orders from this court to compel the Respondent, as the administrator of the estate of the deceased, to transfer the parcel of land now LR. No. Dagoretti/Waithaka/1104 measuring approximately 0.36 hectares to the Applicant, as the administrator of the estate of Mary Mukuhi Mbatia (deceased). In the alternative, the Applicant prayed that in default of the Respondent transferring the said parcel of land to him, the Deputy Registrar of this court do execute all relevant documents to facilitate the transfer of the suit parcel of land.

The application is supported by the annexed affidavit of the Applicant. The application is opposed. The Respondent swore a replying affidavit in opposition to the application. In essence, the Respondent swore that he was not averse to transferring the suit parcel of land to the Applicant provided that the Applicant fulfills certain traditional rites. In paragraph 8 of the replying affidavit, the Respondent stated thus:

*“That I wish to state that on many occasions, our father repeatedly (said) that our sister (Mary Mukuhi Mbatia) would get her share of one (1) acre parcel on condition that her husband (the Applicant herein) having to perform all the rites as per the Kikuyu Customary Law i.e. payment of dowry and performance of Ngurario ceremony since he always considered him to have eloped with his daughter.”*

In paragraph 16 of the affidavit, the Respondent deposed that:

*“I wish to categorically state that by the time of processing and confirmation of this grant, we had widely consulted about the issue of granting a one (1) acre parcel of land to the Applicant whereby we concluded that we shall allocate him the same on condition that the Applicant fulfills our late father’s “wish” but I confirm that the fact that we agreed to allocate him that land does not exonerate the Applicant to perform the said “wishes” of our father.”*

The Respondent further deposed that in addition to fulfilling the cultural rites, the Applicant was

required to refund the administrator the sum of Kshs.110,000/- being the costs of subdivision and the land rates paid in respect of the suit parcel of land.

At the hearing of the application, this court heard oral rival submission made by Mr. Kariuki on behalf of the Applicant and by Mr. Matwera on behalf of the Respondent. They essentially reiterated the contents of the application and the replying affidavit. The issue for determination by this court is whether the Applicant made a case for this court to intervene on his behalf and compel the Respondent to transfer the suit parcel of land to him. The facts of this application are more or less not in dispute. The Applicant is the husband of Mary Mukuhi Mbatia (deceased). Mary was the daughter of the deceased in this case. She was the sister of the Respondent, among other siblings. Upon the death of the deceased, the Respondent petitioned the court to made administrator of the estate of the deceased. The grant was issued to the Respondent together with his late brother. In the petition, the Respondent listed Mary Mukuhi Mbatia (deceased) as a beneficiary of the estate of the deceased. In fact, the Respondent distributed a portion of land measuring approximately one (1) acre to the said Mary Mukuhi Mbatia. Mary Mukuhi Mbatia died before she could inherit the said portion of land. Her husband, the Applicant, petitioned the court to be appointed the administrator of her estate. He was duly appointed.

When the Applicant approached the Respondent to transfer the portion of land due to Mary Mukuhi Mbatia (deceased) to him, the Respondent refused. The reason for his refusal essentially is the claim by the Respondent that the Applicant had not completed customary marital rites when the Applicant got married to Mary Mukuhi Mbatia (deceased). The Respondent demands that the Applicant completes these rites before he can transfer the suit parcel of land to him. This court has carefully evaluated the facts of this case. It was clear to the court that the Respondent is acting unreasonably in refusing to transfer the suit parcel of land to the Applicant. Mary Mukuhi Mbatia was entitled, as of right, to inherit the said portion of land whether or not she was married to her husband according to Kikuyu Customary Law. Her dependants, including the Applicant, cannot therefore be denied what is due to them by reason that the Applicant is required to fulfill a condition precedent set by the Respondent by performing a traditional marital rite.

Under **Section 83(f)** of the **Law of Succession Act**, the Respondent is required to distribute to the beneficiaries, their respective beneficial interest without undue delay. In the present application, it was clear to the court that the Respondent was unreasonably erecting barriers to prevent the Applicant, as the administrator of the estate of Mary Mukuhi Mbatia (deceased), from inheriting the portion of land that is due her estate. The application by the Applicant therefore has merit and is hereby allowed. The Respondent is ordered to execute all the conveyancing documents transferring the suit parcel of land *i.e.* LR. No. Dagoretti/Waithaka/1104 to the Respondent within 45 days of the date of this Ruling or in default the said documents shall be executed on his behalf by the Deputy Registrar of this court. The Applicant, within the said 45 days, pay to the Respondent the sum of Kshs.120,000/- being the cost that the Respondent incurred in the subdivision of the original parcel of land. The Respondent shall only execute the said conveyancing documents upon the payment of the above sum of money. There shall be no orders to court.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE, 2014**

**L. KIMARU**

**JUDGE**