



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO 2181 OF 2006

IN THE MATTER OF THE ESTATE OF STEPHEN KIRAGU KIGONDU (DECEASED)

CECILIA WANJIKU KIRAGU.....APPLICANT

VERSUS

MARY WANGARI KIRAGU.....1ST RESPONDENT

HANNAH WANGARI KIRAGU.....2ND RESPONDENT

RULING

Stephen Kiragu Kigondu, the deceased to whose estate these proceedings relate died on 27th April 2006. The deceased left behind three (3) dependants: Mary Waruguru Kiragu, his widow, Hannah Wangari Kiragu and Cecilia Wanjiku Kiragu (his two daughters). There is a dispute between the dependants in regard to the extent of the estate of the deceased. Whereas Hannah Wangari Kiragu insists that the parcel of land referred to as LR. No. Bahati/Kabatini Block 1/802 is part of the estate of the deceased, Cecilia Wanjiku Kiragu told the court that that parcel of land was sold to her by the deceased. It was therefore not part of the estate of the deceased. There was also a dispute in regard to how another property belonging to the estate of the deceased was to be distributed. That property, LR. No. Dagoretti/Waithaka/609, was distributed by this court on 5th November 2013. The court ordered the property to be inherited by Mary Waruguru Kiragu, the widow, who would have a life interest on the same and upon determination of the life interest, the property would be divided into two (2) equal portions each to be inherited by the two daughters of the deceased. The court further directed that Hannah Wangari Kiragu was to inherit the portion of land facing the road while Cecilia Wanjiku Kiragu was to inherit the section bordering the parcel of land owned by one Peter Ndungu and Mbue.

As regard the dispute on the extent of the estate of the deceased, this court directed the dispute to be disposed of by this court hearing viva voce evidence. During the hearing of the case, this court heard evidence adduced by Cecilia Wanjiku Kiragu and her two (2) witnesses namely, Lucy Masira Kiragu and Edward Karanja Kigondu. The two witnesses were, respectively, brother and sister of the deceased. On her part, Mary Waruguru Kiragu testified. She did not call any witness. According to Cecilia, the deceased, on 17th July 2004 sold her the Bahati parcel of land for purchase consideration of Kshs.250,000/-. On the day the agreement was signed, she paid to the deceased the sum of Kshs.200,000/-. The balance of Kshs.50,000/- was to be paid in monthly instalments of Kshs.10,000/- until payment in full. Cecilia produced a copy of the agreement which witnessed the transaction. She did not however produce any documentary evidence to support her contention that she had paid the balance on the purchase consideration of Kshs.50,000/-. The agreement was witnessed by Edward Karanja Kigondu, the brother of the deceased. He testified that on the material day, he was requested by the deceased to be present when the agreement in respect of the Bahati parcel of land was being prepared.

The deceased told Edward that he had agreed to sell the said parcel of land to Cecilia. He witnessed Cecilia pay the deceased the sum of Kshs.200,000/-. He did not witness Cecilia pay to the deceased the balance of Kshs.50,000/-. Lucy Kiragu testified that on 20th May 2013, she was called by the two daughters of the deceased to accompany them to the Chief's office, Waithaka. She recalled that while at the Chief's office, Mary Waruguru, the widow of the deceased told her that the deceased had sold the Bahati property to Cecilia. That property was therefore not part of the estate of the deceased. An affidavit was later on the same day sworn by Mary Waruguru. In the affidavit, Mary swore that the Bahati property was not part of the estate of the deceased. She also indicated that she would like the Dagoretti property to be divided into two (2) equal portions to be shared between her two daughters. The affidavit was produced as an exhibit during trial.

On her part, Mary Waruguru Kiragu, the widow of the deceased testified that she was not aware that the deceased had sold the Bahati parcel of land to Cecilia. She stated that Edward Karanja, the brother of the deceased, was close to the deceased. She reiterated that she did not want the Dagoretti parcel of land to be sub-divided. She appeared to contradict herself when she testified that she wanted the Dagoretti parcel of land to be divided equally between her two daughters.

The issue for determination by this court is whether Cecilia established that she had purchased the Bahati parcel of land from the deceased. During the hearing of the case, Cecilia produced a copy of the agreement which witnessed the transaction. Cecilia testified that she paid to the deceased the sum of Kshs.200,000/- in part consideration for the purchase of the said parcel of land. Edward Kigundu, the brother of the deceased witnessed the agreement. Mary Waruguru Kiragu, the widow of the deceased, denied that such transaction took place. Lucy Kiragu, the sister of the deceased, testified that she was present when Mary swore an affidavit confirming that the deceased had indeed sold the Bahati parcel of land to Cecilia.

This court has carefully evaluated the evidence adduced in this case. It was clear to this court that the deceased sold the Bahati parcel of land to Cecilia. The agreement was in writing. Although the deceased did not transfer the said parcel of land to Cecilia, this court is convinced that the deceased intended to transfer the said parcel of land to Cecilia. Mary Waruguru Kiragu, the widow of the deceased, appears to have changed her mind in regard to the sale transaction. Her denial of knowledge of the sale transaction was rebutted by the affidavit which she herself swore on 20th May 2013 acknowledging the fact that the deceased had sold the Bahati parcel of land to Cecilia. Mary did not challenge the authenticity of the said affidavit. This court therefore holds that Cecilia established, to the required standard of proof on a balance of probabilities, that she indeed purchased the Bahati parcel of land from the deceased. That parcel of land does not therefore form part of the estate of the deceased. However, Cecilia failed to prove that she had paid the balance of the purchase consideration of Kshs.50,000/- to the deceased. That sum is due and owing to the estate of the deceased. Since the deceased left behind three beneficiaries (including Cecilia), this court directs Cecilia to pay to her mother Mary Waruguru Kiragu the sum of Kshs.17,000/- and to her sister Hannah Wangari Kiragu the sum of Kshs.17,000/-.

In the premises therefore, the property registered as LR. No. Bahati/Kabatini Block 1/802 is declared to be the property of Cecilia Wanjiku Kiragu. It is not part of the estate of the deceased. It shall be transferred to the said Cecilia Wanjiku Kiragu. Cecilia shall pay the amount ordered above within sixty (60) days of the date of delivery of this Ruling. There shall be no orders as to costs.

DATED AT NAIROBI THIS 25TH DAY OF JULY, 2014

L. KIMARU

JUDGE

