



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO.916 OF 2009

IN THE MATTER OF THE ESTATE GITAU MUROKI (DECEASED)

JOHN NJENGA MUROKI ALIAS

JOHN GATHAMUA MARA.....APPLICANT

VERSUS

HANNAH WANJIRU GITAU.....1ST RESPONDENT

HANNAH NJAMBI GITAU.....2ND RESPONDENT

JUDGMENT

Gitau Muroki, the deceased to whose estate these proceedings relate died on 24th November 1993. On 22nd April 2009, Hannah Wanjiru Gitau and Hannah Njambi Gitau (the Respondents) petitioned the court to be issued with a grant of letters of administration intestate in respect of the estate of the deceased. In their petition, the Respondents stated that the deceased was married to three (3) wives and at the time of his death, was survived by two widows (the Respondents) and thirteen (13) children. They also listed Joseph Kimani Ndururi's children as beneficiaries of the estate of the deceased. Joseph Kimani Ndururi was said to be the deceased's brother (he was also deceased). His children were seven (7) in number. The assets comprising the estate of the deceased were listed as:

- I. LR. No. Muguga/Gitaru/175 measuring 5.2 acres
- II. LR. No. Maela/Ndabibi Block 3/332 (Ngondi) measuring 3.5 acres
- III. Ngondi Commercial Plot measuring 0.045 acres
- IV. Money in KCB Naivasha Branch
- V. Shares in Karagita Farmers Society valued at Kshs.120,000/-.

The grant was issued to the Respondents on 20th November 2009.

On 14th October 2010, the Applicant moved the court by summons made pursuant to **Section 76** of the **Law of Succession Act** seeking to have the grant of letters of administration intestate made to the Respondent annulled or revoked on the grounds that the said grant was fraudulently obtained after a false statement had been made which concealed from the court the fact that the Applicant was entitled to half a share of the parcel of land registered as LR. No. Muguga/Gitaru/175 measuring 5.2 acres (the suit parcel of land). The Applicant stated that he had exclusively been in possession of the said portion of the suit parcel of land for a period of more than twenty (20) years. In the affidavit in support of the application, the Applicant stated that he was the younger brother of the deceased. He stated that the deceased held title to the suit parcel of land in trust for himself and his siblings.

The Applicant deponed that he moved to the suit parcel of land in 1978 and constructed a house thereon with the consent of his two brothers (both now deceased). He stated that in October 1981, the three brothers agreed to subdivide the suit parcel of land into two portions: one portion was to be owned by the deceased and the other portion was to be owned by the Applicant. Their other brother, Joseph Kimani was not entitled to any share in this suit parcel of land because he had inherited another parcel of land registered as LR. No. Kiganjo/Gachiku/144. He swore that at the time of his death, the deceased lived at Maela and not on the suit parcel of land. In 1991, the deceased allowed his second wife to reside on the portion of land that he was entitled to in the suit parcel of land.

It was the Applicant's case that after the death of the deceased, the deceased's family was reluctant to pursue the succession cause of the suit parcel of land until he was forced in 2006 to cite members of the family to compel them petition the court for the said letters of administration. After their failure to file any papers in answer to the citation, the court allowed him to lodge a petition to administer the estate of the deceased. This petition was filed as Nairobi High Court Succession Cause No. 1716 of 2006. During the pendency of the petition, the Respondents, without notifying him, petitioned the court using the present proceedings, and in the process excluded him as a beneficiary. It was his case that the present petition was filed with a view to denying him what is rightly due to him.

Upon being served with the summons, Hannah Njambi Gitau, one of the Respondents, swore a replying affidavit in opposition to the application. She deponed that the deceased was the sole registered owner of the suit parcel of land. He denied the suggestion by the Applicant to the effect that the deceased held part of the suit parcel of land in trust for the Applicant. She denied the allegation by the Applicant to the effect that the suit parcel of land had been divided into parcels of land in 1991. She stated that her co-wife relocated from Maela to Kikuyu in 1994. The family instructed their advocate to demand that one Jonah Njenga Muroki give vacant of his suit parcel of land. The said Jonah disregarded the demand and was still residing on the suit parcel of land to date.

She deponed that on several occasions the matter had been referred to the Provincial Administration for arbitration but nothing had come out of it. She denied that she had petitioned the court without naming all the beneficiaries of the deceased. It was the Respondents' case that the Applicant was not entitled to any portion of the suit parcel of land. She admitted that the Applicant resided on the suit parcel of land during the lifetime of the deceased, but did so with the consent and permission of the deceased. It was upon his death, that the family decided that they wanted the land back hence the demand notice that was issued to the Applicant. For the sake of the amicable settlement of the dispute, the Respondents were willing to give to the Applicant 0.5 acres near Kikuyu Springs in the spirit of not wanting to go against the wishes of the deceased. Otherwise, the Respondents reiterated that the Applicant had no claim over the suit parcel of land.

Prior to the hearing of the case, the parties agreed by consent for the matters in dispute to be determined by this court hearing *viva voce* evidence. The parties further agreed that the issue in dispute that was to be determined by the court was the entitlement of the Applicant in the suit parcel of land. The case was listed for hearing by the court. The Applicant was present in court. The Respondents were absent. The court directed the Applicant to serve the Respondents for hearing on 16th July 2014. The Respondents were duly served. They did not attend court during the date fixed for the hearing of the case. This court directed the case to proceed to hearing, the absence of the Respondents notwithstanding. This court heard the oral evidence of Simon Njenga Muroki (Applicant) who testified as PW1 while Benson Kamau Njoroge testified as PW2. They both told the court that the suit parcel of land belonged to Muroki Maara who was the father of the Applicant, the deceased and another son by the name Kariuki. It was their evidence that the Applicant had lived on the suit parcel of land while the deceased had relocated to the Rift Valley. His family later returned to the land. It was the Applicant's case that the suit parcel of land should be divided into three (3) portions of land *i.e.* so that the families of the three brothers may inherit ? portion of the suit parcel of land. In essence, the Applicant reiterated the contents of his affidavit in support of the summons for revocation of grant save that instead of asking for half portion of the suit parcel of land, he was now asking for one third.

This court has carefully evaluated the facts of this case. It has also considered the evidence that was

adduced by the Applicant in support of his case. It was clear from the evidence adduced that indeed the deceased was registered as the owner of the suit parcel of land in trust for himself and his brothers. This finding is supported by the fact that the deceased allowed the Applicant to reside on the parcel of land during his lifetime. It was only after his death, that the family of the deceased made a move to evict the Applicant from the suit parcel of land. The evidence adduced by the Applicant was uncontroverted.

In the premises therefore, this court holds that the Applicant established, to the required standard of proof on a balance of probabilities, that he is entitled to inherit a portion of the suit parcel of land by virtue of the fact that the deceased held title to the suit parcel of land in trust for himself and his two brothers. In the circumstances therefore, the suit parcel of land i.e. LR. No. Muguga/Gitaru/175 shall be divided into three (3) portions. Each portion shall be inherited by the family of the deceased, the Applicant and the family of Kariuki (deceased). The Applicant shall get the portion of land around where he is currently residing. Judgment shall be entered on the above terms. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2014.

L. KIMARU

JUDGE