



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 430 OF 2011

HANNAH NJERI KANGARAPLAINTIFF

VERSUS

LANDS REGISTRAR, KIAMBURESPONDENT

RULING

The plaintiff/applicant hereinafter referred to as the applicant has filed a Notice of Motion dated 4/10/2011 brought under section 143 of the Registered Land Act & Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:-

1. That the Lands Register be rectified by cancellation of the sub-division of Title No. Kiambaa/Waguthu/75 and subsequent registration of Title No. Kiambaa/Waguthu/1775, Title No. Kiambaa/Waguthu/1776, Title No Kiambaa/Waguthu /1777 and Title no. Kiambaa/Waguthu/1778.
2. That costs of this application be provided for.

The following application is based on the following grounds.

- a) The Applicant is the registered proprietor of Title no. Kiambaa/Waguthu/1775, Title No. Kiambaa/Waguthu/1776, Title No. Kiambaa/Waguthu/1777 and Title No. Kiambaa/Waguthu/1778.
- b) The sub-division of Title No. Kiambaa/Waguthu/75 into Title No. Kiambaa/Waguthu/1775, Title No. Kiambaa/Waguthu/1777 and Title No. Kiambaa/Waguthu/1778 was obtained by way of a fundamental mistake.
- c) That for equity to apply it is necessary for the entire sub-division to be cancelled and land re-divided to cater for all the beneficiaries.

The application is supported by the affidavit of Hannah Njeri Kangara. The Respondent was served but did not attend the hearing of the application.

In the applicant's supporting affidavit she states as follows; that the parcel of land Known as Title No. Kiambaa/ Waguthu/75 was owned by one Joseph Kangara Njuguna. She is one of the wives of the said Joseph Kangara Njuguna, her co-wife was one Grace Ngonyo Kangara died in the year 2003. The parcel of land known as Title No. Kiambaa/Waguthu/75 was their matrimonial/family home. Prior to her husband's death he caused the sub-division of the parcel of land known as title No. Kiambaa/Waguthu/75 into title No. Kiambaa/Waguthu/1775, Title No. Kiambaa/Waguthu/1776, Title No. Kiambaa/Waguthu/1777 and Title No. Kiambaa/Waguthu/1778 and subsequently transferred three of the resulting parcels of land to her, her late husband retained land Title No. Kiambaa/Waguthu/1778 for

himself. At the time of sub-division of parcel of land known as Title No. Kiambaa/Waguthu/75 and subsequent transfer of the three resulting parcels of land in her favour, her late husband and herself operated under the misconception that he owned other real estate but in actual fact, the parcel of land known as Title No. Kiambaa/Waguthu/75 was the only property owned by Joseph Kangara Njuguna. She later became aware that the parcel of land known as title No. Kiambaa/Waguthu/75 was the only property owned by her late husband; that had she known this before she would not have acquiesced to the said sub-division and/or subsequent transfer. The sub-division of the parcel of land known as title No. Kiambaa/Waguthu/75 into title No. Kiambaa/Waguthu/1775, title No. Kiambaa/Waguthu/1776, title No. Kiambaa/Waguthu/1777 and title No. Kiambaa/1778 and subsequent transfer of three of the resulting parcels of land in her favour and one resultant parcel in his name was made as a result of fundamental mistake on the part of Joseph kangara Njuguna and herself. As a result of the said sub-division and/or subsequent transfer, her late husband left his other dependants destitute, which was not his intention. She desires to remedy this mistake by having all the dependants of the late Joseph Kangara Njuguna acquire a share in the parcels of land known as Title No. Kiambaa/Waguthu/1775, title No. Kiamba/Waguthu/1776, title No. Kiambaa/Waguthu/1777 and Title No. Kiambaa/Waguthu/1778. All the beneficiaries of the estate, herself included have in the probate and administration cause agreed on the mode of distribution, to ensure that each of the said dependants acquires an equitable share in the said property. Hence it is necessary for the said parcels of land to revert back to title No. Kiambaa/Waguthu/75 under the ownership of her late husband so that legal title thereto by his dependants is acquired under the rules of intestate succession.

Counsel made oral submissions which I have carefully considered together with the contents of the applicant's affidavit together with the provisions of Section 143 of RLA . The applicant in her affidavit explains the reasons for her application that it was a mistake of her husband to subdivide and transfer the parcels of land to her name and this has made the other beneficiaries to his estate destitute. This is a valid reason. There was no fraud

Section 143 (1) of CAP 300 states that “ subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.

Subsection (2) states the register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default”.

I find that the reasons given by the applicant in her affidavit on why the Court should give the orders sought are valid and I am satisfied. The registration the applicant seeks to rectify by cancellation is not a first registration. The application was not opposed by the land registrar Kiambu. Her main aim is to reverse the situation that her husband left which has caused the other beneficiary to be destitute. Her intentions are good for the benefit of distribution of her late husband estate. I find merit in the applicant's application and grant prayer 1 of the Notice of Motion dated 4th of October 2011, that the Lands Register be rectified by cancellation of the sub-division of Title No. Kiambaa/Waguthu/75 and subsequent registration of Title No. Kiambaa/Waguthu/1775, Title No. Kiambaa/Waguthu/1776, Title No Kiambaa/Waguthu /1777 and Title no. Kiambaa/Waguthu/1778. No orders as to costs

Dated and delivered this 6th Day of March 2012

R. OUGO
JUDGE

In the Presence of:-

For the Applicant

For the Respondents/Applicant

Court Clerk