



IN THE MATTER OF THE ESTATE OF EDDITAR WAIRIMU KAMIRI

RULING

Edditar Wairimu Kamiri (hereinafter “the deceased”) died on 12th December, 2008. On 14th July, 2003, **Teresiah Wanjiku** and **Sylvia Wanjiru Kamiri** (hereinafter “the 1st and 2nd petitioners” respectively) petitioned for a Grant of Probate of her will. In the affidavit in support of the petition, the following were listed as having survived the deceased:- the two petitioners, **Francis Karanja** and **Daniel Njeha**. The asset of the deceased was named as **Eldoret Municipality Block 16 (Kamukunji)66**. On 23rd October, 2009 a grant of probate was issued to the petitioners, which grant was confirmed on 25th October, 2010. The properties indicated in the certificate of confirmation were **Eldoret Municipality Block 12/356 and 357** and **motor vehicle registration number KLZ 286**.

On 31st December, 2010 **Francis Karanja Kamiri** and **Daniel Njehia Kamiri** (hereinafter “the 1st and 2nd objectors”) lodged an application for revocation/annulment of the said grant on the following grounds:-

- 1) That the petitioners concealed material facts to the effect that the objectors are actually administrators of the estate of their late father.**
- 2) That the applicants did not disclose to the court that their deceased mother was a joint administrator and/or joint owner of all assets of the estate of their deceased father Peter Kamiri Kareme**
- 3) That the applicants did not disclose to the court that they had been given their final shares of the estate of their late father.**
- 4) That the applicants did not disclose to the court that their late mother did not leave behind any estate to be administered.**
- 5) That the applicants lied to the court that their late mother left two wills when they knew well that she was taken care of by the objectors when the petitioners were long married.**

The application is supported by an affidavit sworn by the objectors. The gist of the averments in that affidavit is that, the deceased was not in a position to make any will at the time she is alleged to have done so and that she left behind no estate of her own to be administered. Annexed to the affidavit, *inter alia*, is a copy of the title deed of Eldoret Municipality/ Block 12/356 issued to the objectors, their deceased mother and another on 17th May, 2005.

The application is opposed and there are replying affidavits sworn by the 1st petitioner and **Hilary Chemitei** then counsel for the mother of the parties before she died. The 1st petitioner has sworn, *inter alia*, that their deceased mother, though ill, had capacity to make the said wills; that the deceased mother had equal shares with the objectors and she passed her shares to them; that she also had vehicle registration number KLZ 286 and that the grant was not obtained by means of fraud or misrepresentation.

Hilary Chemitei, on his part, swore, *inter alia*, that he acted for the parties' deceased mother and the petitioners in Eldoret HC. Succession Cause NO. 218 of 2000 (**In the matter of the estate of Peter Kamari Kareme** deceased); that the deceased mother indeed bequeathed her share of **Eldoret Municipality block 12/356** and **357** to her daughters in her will dated 1st July 2008; that she was then of sound mind and she executed the will in the absence of the petitioners.

In response to the replying affidavits, the objectors have filed a further affidavit in which they reiterate that their deceased mother made no will and had no share in **Eldoret/Municipality Block 12/356** and **357** which automatically became theirs after the demise of their mother. Annexed to the further affidavit are copies of the said titles which are presently registered in their names. They were so registered on 24th February, 2011.

In an application by way of a Notice of Motion filed on 5th may, 2011, the petitioners sought an order of the court directing that proceeds from rental premises situated on the two properties be shared proportionately and equally between the petitioners and the objectors on the ground that the petitioners are holders of grant of representation in respect of the estate of their deceased mother.

When the two applications came up before me for hearing on 12th march, 2012, counsel agreed to file written submissions which were duly filed by 21st may, 2012. The parties reiterated their stand-points taken in their pleadings.

I have considered the record, the applications, the affidavits filed and the submissions of counsel. Having done so, I take the following view of the matter. Although the applications are two the only issue for determination in the two applications is whether the deceased **Edittar Wairimu Kamiri** had any interest in the two properties on her demise. The answer is in the nature of the interest she had in the two properties. The objectors have sworn that they were registered as joint proprietors of the said properties after confirmation of the grant in **HC. P & A Cause No. 218 of 2008**. They have exhibited a copy of the title of **Eldoret Municipality Block 12/356** issued to them after that confirmation. The title was issued to them and their mother and brother as joint proprietors on 17th May, 2005. They have also exhibited copies of title deeds of the same property and that of parcel number **Eldoret Municipality/Block 12/356** issued after the demise of their mother. The same are now registered in the names of the objectors as joint proprietors. The type of registration before the demise of their deceased mother is not disputed by the petitioners. Section 102 of the Registered Land Act (Cap 300) reads as follows:-

“S. 102

(1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land and consequently-

(a) Disposition may be made only by all the joint proprietors; and

(b) On the death of a joint proprietor his/her interest shall rest in the surviving proprietor or the surviving proprietors jointly.

(2) For avoidance of doubt it is hereby declared that

(a) The sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and

(b) A joint proprietor of any land, lease or charge may transfer his interest therein to all the other proprietors.

(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship and the severance shall be completed by

registration of the joint proprietors as proprietors in common by filing the instrument.”

In view of the provisions of Section 102 (b) of the Registered Land Act therefore, when the mother of the parties died, her interest vested in the surviving proprietors jointly since she was registered together with the objectors as joint proprietors. The objectors therefore, in law, became the absolute joint owners of Eldoret Municipality/Block 12/356 and 357 on the demise of their mother, **Edittar Wairimu Kamiri**. Her interest was not available for transmission to the petitioners or to anyone else. That being my view of the matter, the said title or portions thereof were not assets of the estate of **Edittar Wairimu Kamiri** and should not have been the subject of distribution to the petitioners in this cause. For the same reasons, the deceased in her life time, could not, on her own, transfer her interest to the petitioners. It also goes without saying that if the deceased wished to bequeath her interest in the said titles, she should have first, with the agreement of other joint proprietors, severed the joint proprietorship and created common proprietorship. In that event, her interest would be available for administration by the petitioners. It is therefore not necessary to determine whether the deceased left a valid will since the interest she purported to bequeath to the petitioners could not survive her.

In those premises, the petitioners application dated and filed on 5th May, 2011 has no sound basis and is dismissed.

With regard to the objector’s application dated 30th December, 2010, I have come to the conclusion that prayer 2 should be granted in part. The objectors have demonstrated that no part of title numbers **Eldoret Municipality/Block 12/356 and 357** formed part of the estate of the deceased. Those titles should therefore not have been listed as assets of that estate. The same are therefore expunged from the petition for the grant of representation and the certificate of confirmation issued to the petitioners.

The petitioners are children of the deceased and were entitled to petition for a grant of representation in respect of the free property of the deceased. They may not have understood the consequences of joint proprietorship of property and may genuinely believed that the deceased had a share in the said properties to which they were entitled. In the premises I do not find that the no-disclosures alleged by the objectors were material to warrant the annulment or revocation of the grant of representation to the estate of their deceased mother. The petitioners may wish to pursue other interests/claims on behalf of the estate of the deceased and they can only do so as legitimate administrators of her estate. I do not therefore have to revoke or annul the grant issued to them. The petitioners therefore remain holders of the grant of representation to the deceased estate save that the two properties stated above are not assets of the estate.

Each party shall bear his/her own costs of the proceedings, given that they are sisters and brothers.

Orders and directions accordingly.

DATED AND DELIVERED AT ELDORET

THIS 25TH DAY OF JUNE, 2012

F. AZANGALALA

JUDGE

Read in the presence of:-

Mr. Yego for the Petitioners and

Ms. Obinde H/B for Mr. Miyienda for the Objectors.

F. AZANGALALA

JUDGE

25TH JUNE, 2012