



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Succession Cause 113 of 1995
IN THE MATTER OF THE ESTATE OF ELIUD NGICHU GITHIRE (DECEASED)
GEORGE GITHIRE APPLICANT

VERSUS

JULIA NJOKI NGICHU..... RESPONDENT

RULING

ELIUD NGICHU GITHIRE, the deceased, died intestate on 31st July 1992. He was survived by his wife, **Julia Njoki Githire**, the widow, and 6 sons and 5 daughters whose names are:

- (a) *Julia Njoki* - widow
- (b) *Roselind Njeri* - daughter
- (c) *Lucy Muthoni* - daughter
- (d) *George Githire* - son
- (e) *Ruth Wanja* - daughter
- (f) *Eunice Wanjiku* - daughter
- (g) *James Njoro* - son
- (h) *Francis George* - son
- (i) *David Marigi* - son

- (j) Arthur Nduru - son
- (k) Francis Njoroge - son
- (l) Anne Mbairé - daughter

The deceased left an Estate that comprised various properties including land titles Nos.

1. No.Kabuku/Ngecha/1256,
2. Limuru Township (239/2/3/1; 143/6, 239/4/2) Itungi Farm 208 acres,
3. Hillcrest 3 farm shares 186 and
4. Njunu Farm at Nyandarua No.2932 and
5. Plots at Limuru including shares and chattels.

On 4.4.1995, a Grant of Letters of Administration intestate in the deceased's estate was made to Julia Njoki Ngichu, the widow. This grant was confirmed on 19.7.1995 and the estate was distributed among the widow and the deceased's said children.

On 22.9.2009 Certificate of Confirmation of the grant was rectified following an application made by George Githire, a son of the deceased.

On 28.4.2011, George Githire Ngichu (the applicant) applied by summons dated 27.4.2011 for orders that

3. *That this Honourable Court do issue a Restraining order restraining the 3rd Respondent from registering any instrument, paying out any proceeds of the sale of the 3rd Respondent's land or dealing in any other manner whatsoever with 186 shares held in the 3rd Respondent Company in the names of Eliud Ngichu Githire (Deceased), Julia Njoki Ngichu or Arthur Nduru Ngichu pending the hearing and determination of this application.*
4. *That this Honourable Court do issue an order directing the 3rd Respondent to cancel any registration in the names of the Julia Njoki Githire or Arthur Nduru Githire as absolute owners of the 186 shares that belong to the Estate of Eliud Ngichu Githire (Deceased)*
5. *That an order be issued directing the 3rd Respondent to register the 186 shares that belong to the Estate of Eliud Ngichu Githire (Deceased) in the 3rd Respondent in the name of the Administratrix to hold in trust for all the children as per the Rectified Confirmation of Grant dated 22nd September 2009.*

In the Certificate of Confirmation of the Grant, the Hillcrest Farm Shares were to be held by the administrator on trust for all the deceased's children. The shares of the deceased in the said farm are said to be held by **Buxton Farmers Co. Ltd** which trades under the name of Hillcrest Farm.

The Applicant contends in his application dated 27.4.2011 that he is a beneficiary of the Shares held in Buxton Farmers Co. Ltd which are held in trust by his mother as the administratrix of the estate of the deceased. He claims that the shares have been sold by the 3rd Respondent, Buxton Farmers Co. Ltd. and that the sale proceeds of the shares are about to be distributed. He seeks orders to stop the distribution of the said proceeds.

The rectified Certificate of Confirmation of the Grant shows that the deceased's 186 shares in Hillcrest Farm were to be held by Julia Njoki Githire in trust for all the deceased's children including the applicant who has annexed a copy of an advertisement carried in the Daily Nation whose date is not

indicated showing that Buxton Farmers Co. Ltd has advertised the farm for sale.

When the Application came up for hearing, **Mr. M. Gatitu**, the learned counsel for the Applicant urged the court to grant orders in terms of prayers 4 and 5 of the application.

Mr. R. Munyao, the learned counsel for the administratrix and the 1st and 2nd Respondent's told the court that his clients had not filed replying affidavits. He submitted that under Sections 6 and 15 the Limitation of Actions Act, Cap 22, the application dated 27.4.2011 was time-barred because it was not brought within 6 years from the date on which the grant was issued (in 1995). He contended that prayer 5 cannot be granted.

Mr. N. Kamau the learned advocate or the Interested Party did not oppose the application.

I have perused the application and considered the submissions made by all the counsel. I hasten to point out that counsel in this application did not do justice to their briefs. No case law was quoted and the issue for determination was not**** nor was it put forward with clarity. But the facts are not complicated. The administratrix of the estate holds the 186 shares in Buxton Farmers Co. Ltd. in trust for all the children of the deceased. I do not, with respect, find any relevance in the reference to the Limitation of Actions Act quoted by counsel. The administratrix of the estate is a trustee in relation to the shares and she is not qua trustee relieved from her obligation to the beneficiaries. She cannot however stop Buxton Farmers Co. Ltd from disposing the company land. But once the proceeds of sale are realized, and received, she is obligated to pay the same to the beneficiaries in equal shares. It is not alleged that she has already received the proceeds for the 186 shares. There is no basis for the order sought by the Applicant that the administratrix of the estate of the deceased as the holder of the shares be removed. That can only be done if the Certificate of Confirmation of the Grant was amended. The evidence before me shows that the other children of the deceased are not disposed to do that. In any case, there is no application for its rectification. As long as it remains in place, the widow cum administratrix of the deceased's estate will continue to have legal capacity to receive the sale proceeds for the 186 shares and her obligation to the beneficiaries remains to ensure that such proceeds are equally divided and paid out to each beneficiary including the Applicant. The orders sought in prayers 4 and 5 of the application cannot be granted. The widow is not an absolute owner of the shares. If the Buxton Farmers Co. Ltd were in doubt whether the widow is holding the shares as a trustee, all that the Applicant should is to furnish the said company with a copy of the amended Certificate of Confirmation of the grant dated 22.9.2009 which makes this obvious. But the company cannot micro-manage the administratrix.

I find no merit in the application. The Applicant's fear is not justiciable. I dismiss the application with costs to the Respondents numbers 1 and 2.

Dated at Milimani Law Courts, Nairobi, this 14th day of June 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mr. M. Gatitu, Advocate, of Gatitu Wang'oo & Co., Advocates for the Applicants

Mr. R. Mungao, Advocate of Mung'ao Rachier & Co. Advocates for the 1st and 2nd Respondents

Mr. N. Kamau Advocate of Ngata Kamau & Co. Advocates for 3rd Respondents

Mr. Kugwa – Court Clerk