



ZACHARIA KAMAU MWANGIAPPELLANT

Versus

HANNAH NJERI MWANGI1ST RESPONDENT

VIRGINIA WANGUI MWANGI2ND RESPONDENT

MIRIAM NJOKI MWANGI3RD RESPONDENT

RULING

The subject matter of this ruling is the summons general dated 13th December 2011 in which Joyce Wanjiku Mwangi, the applicant herein prays to be given the following orders:-

- 1. That according to the Succession cause no. 59 of 2003 dated 13th June 2006, which was subject of the sub-division of the land parcel no. LOC 2/KANGARI/259 be amended succession and a certificate of confirmation thereof be issued including the following remained beneficial namely Joyce Wanjiku to enable her heir her father's property together with other since she is entitled.***
- 2. That the beneficiary herein and /or other beneficiaries of Mwangi Kiriiri be at liberty to make any necessary further application.***
- 3. That costs of this application be provided for.***

The applicant swore two affidavits in support of the summons. Zacharia Kamau Mwangi, the respondent to the application filed grounds of opposition to resist the summons.

I have considered the material placed before this court and the oral submissions made by the applicant plus those of Mr. Waruingi, learned advocate for the respondent.

In the summons, the applicant is basically seeking to be enjoined as a party to this cause and to be included as a beneficiary of the Estate of Mwangi Kiriiri, deceased vide Kigumo R.M.C Succession Cause no. 59 of 2003. The applicant averred that she is entitled to a share of the parcel of land known as LOC.2/KANGARI/2591, being the daughter of the late Mwangi Kiriiri. She proposed for the aforesaid parcel of land to be shared in the following manner between the beneficiaries.

- 1. Agnes Njeri Kamau - 0.1 acres**
- 2. Joyce Wanjiku Mwangi - 1.33 acres**
- 3. Hannah Njeri Mwangi - 1.33 acres**
- 4. Zacharia Kamau Mwangi - 1.33 acres**
- 5. Milka Njoki Mwangi - 1.33 acres**

6. **Virginisa Wangui Mwangi - 1.33 acres**

It is the applicant's contention that she was excluded from sharing the estate of her deceased father when the aforesaid succession cause came up for hearing.

Mr. Waruingi, learned advocate for Zacharia Kamau Mwangi strenuously opposed the application. The learned advocate pointed out that the application is res judicata in that the applicant had previously made a similar application dated 20th June 2011 which application was heard and determined. Mr. Waruingi further argued that the parcel of land known as LOC 2/KANGARI/259 no longer exists, the same having been closed upon subdivision and distributed thereafter. The Respondent further pointed out that the Applicant has always been aware of the succession proceedings pending before the Kigumo Senior Resident Magistrate's Court but she opted not to raise any objection until after succession proceedings were concluded and distribution completed. The Respondent also pointed out that the Applicant can as well claim her share from the land given to her mother i.e. **LOC. 2/KANGARI/4317**.

After a careful consideration of the material placed before me plus the oral submissions made by the parties, it is clear that this dispute started at Kigumo Senior Resident Magistrate's Court. The grant was confirmed by the Kigumo Court on 13th June 2006 in which the Respondent and three others were each given 1.33 acres to be excised from LOC.2/KANGARI/2591. An appeal was preferred and the decision of the Kigumo Senior Resident Magistrate's Court was overturned by Lady Justice Kasango in which LOC. 2/KANGARI/2591 was re-distributed as follows:

Zakariah Kamau Mwangi - 2 acres
Milkah Muthoni Muturi - 2 acres.

Agnes Ngari Kamau - 2 acres.

Martha Waitherero - 0.1 acres

The parcel of land due to Martha Waitherero (now deceased) is the subdivision known as **LOC. 2/KANGARI/4250**. After the demise of Martha Waitherero Mwangi, the aforesaid parcel of land was to go to Hannah Njeri Mwangi, Virginia Wangui Mwangi and Miriam Njoki Mwangi (1st, 2nd and 3rd Respondents herein). It is the submission of Joyce Wanjiku Mwangi that her sisters i.e. the 1st, 2nd and 3rd Respondents have excluded her from sharing of the aforesaid parcel of land. Let me state that it is not in dispute that the parcel of land known as LOC. 2/KANGARI/2591, does not exist. The same was closed upon subdivision. From the response filed by the Respondent it would appear the allegation by the Applicant that she is a sister to the 1st, 2nd and 3rd Respondents, has not been controverted. At the back of my mind, the Applicant appears to have a genuine claim but unfortunately she may not get that right vide the current application. If well advised, not all is lost if she can take up the necessary proceedings against the relevant persons. It is not true that the current application is res judicata as submitted by Mr. Waruingi. The application dated 20th June 2011 was made by Hannah Njeri Mwangi and not the Applicant herein. The Applicant's application will not give rise to any executory orders since the subject matter being sought to be recovered no longer exists. Again, the proceedings in respect of Kigumo S.R.M.C. SUCC Cause No. 59 of 2003 were concluded and determined on appeal. This court cannot give orders in vain. The summons dated 13th December 2011 is ordered dismissed but with no order as to costs.

Dated and delivered this 2nd day of August 2012.

J. K. SERGON
JUDGE

In open Court in the presence of Mr. Waruingi for the Respondent and the Applicant in person.