



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Succession Cause 284 of 1996

IN THE MATTER OF THE ESTATE OF SAMUEL WAHOME GATHERU - DECEASED

WACHIURI WAHOME.....APPLICANT
VERSUS

FESTUS GATHERU WAHOME
ALICE WANJIRA NJOROGE
REGINA WANJA MUNGAI
GLADYS WANGUI MWANGI.....RESPONDENTS
MARY WAITHIEGENI WAHOME
PATRICK MBOGO WAHOME
JOHN NDURA WAHOME

RULING

WACHIRA WAHOME, hereinafter referred to as the ‘Applicant’, applied to administer the unadministered assets of the Estate of Samuel Wahome Gatheru, deceased, vide the summons dated 16th November 2009. The Applicant swore an affidavit he filed in support of the Summons. It is averred by the Applicant that Rebecca Muthoni, one of the administratrix of the Estate of Samuel Wahome Gatheru, deceased, died on 16th July 2008 leaving part of the Estate of Samuel Wahome Gatheru unadministered. It would appear the Applicant made a similar application dated 2nd December 2009. In the later application, the Applicant has specified the assets which he claimed were left unadministered as follows:

- (i) **KIRIMUKUYU/KIRIA/17.**
- (ii) **KIRIMUKUYU/KIRIA/68**
- (iii) **KIRIMUKUYU/KIRIA/PLOT NO. 1 NGURUMO**
- (iv) **KAGAARI/KANJA/1863**

When served with the later application dated 2nd December 2009, Patrick Mbogo, hereinafter referred to as the ‘respondent’, filed an affidavit in response sworn on 22nd January 2010. He deponed that the later Rebecca Muthoni Wahome had left no property unadministered in respect of the Estate of Samuel Wahome Gatheru, deceased. He further alleged that the property the Applicant claims to be unadministered were registered in the name of the late Rebecca Muthoni Wahome, hence the issues can only be dealt vide **NYERI H.C.S.C. NO. 490 OF 2009** relating to the Estate of Rebecca Muthoni Wahome, deceased. The Applicant filed a further affidavit he swore on 19th March 2010. Annexed to that affidavit are copies of the register relating to the following titles:

- (i) **PLOT NO. 1 NGURUMO.**

- (ii) **KIRIMUKUYU/KIRIA/68**
- (iii) **KIRIMUKUYU/KIRIA/17**
- (iv) **KAGAARI/KANJA/1863**

The first title i.e. **PLOT NO. 1 NGURUMO**, is indicated to be in the name of Samuel Wahome Gatheru while **KIRIMUKUYU/KIRIA/68** is in the name of **PATRICK MBOGO WAHOME** whereas titles stated in (iii) and (iv) above are in the names of **REBECCA MUTHONI WAHOME**, deceased.

When the aforesaid applications came up for hearing, this court directed parties to file submissions. The Applicant was the one party who filed submissions. I have considered those submissions *vis-a-vis* the averments deponed in the affidavits. The Applicant has attempted to introduce new issues in his submissions. He claimed that the judgment of Lady Justice Kasango of 7th July 2008 was not fully followed. He also admitted that **PLOT NO. 1 NGURUMO** was to be registered in the name of Rebecca Muthoni Wahome, deceased. After a careful consideration of the arguments and averments made by both sides, I am convinced the two applications (dated 16th November 2009 and 2nd December 2009) have no merit. I do not know why the Applicant filed two similar applications. It would appear he only served the later application (2nd December 2009). That is why that application received a response. In my view the Applicant abused the court process when he filed more than one application in respect of similar reliefs. Even assuming that the Applicant had not abused the court process, still I do not think the applications can see the light of the day. It is admitted on oath and by submissions that the alleged unadministered assets are already in other peoples' names or have been transmitted to other beneficiaries. It is therefore obvious that the application has no merit hence the same is for dismissal. The property which are specified to be unadministered are:

- (i) **PLOT NO. 1 NGURUMO.**
- (ii) **KIRIMUKUYU/KARIA/68**
- (iii) **KIRIMUKUYU/KARIA17**
- (iv) **KAGAARI/KANJA/1863**

I have already stated that three of the aforementioned properties are already in the names of Rebecca Muthoni Wahome, deceased, while one is in the name of Patrick Mbogo.

In the end the applications are ordered dismissed with costs.

Dated and delivered at Nyeri this 2nd day of June 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Muchiri for the Respondent and the applicant in person.