



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 1580 OF 1995

IN THE MATTER OF THE ESTATE OF THAIRU NJURANGA – (DECEASED)

RULING

The deceased herein was the father of the Administrator and the grand father of the Objector who represented his late father Peter Kabuu who was a son of the deceased.

Three properties registered in his names were in dispute namely;

1. **Kabete/Kabete/82**
2. **Kabete/Kabete/T.156**
3. **Kabete/Kabete/80**

It is the case of the objector that the first property i.e. Kabete/Kabete/82, although registered in the name of the deceased, was not wholly owned by him. It is averred that a portion thereof was purchased by the late Peter Kabuu and he agreed to the portion bought by the deceased and also agreed to amalgamate his portion register in the name of the deceased who was his father and he was his eldest son.

His claim has been accepted by the two courts namely: African court in the case No.111 of 1966 and by Kiambu Resident Magistrate's court in Appeal No.54 of 1966.

The certified copy of judgment of the of the African court dated 13.3.1966 as well as the copy of judgment of the Appeal dated 12th January, 1967 in the said case were produced by the Objector.

In the first judgment it is especially observed that:

“This court believes that when the said land was demarcated Peter Kabuu (defendant) had bought a land from one Jonah Wairobi and it was consolidated together with the Plaintiff's land.”

It was further observed that the deceased accordingly divided the land amongst three houses and late Peter Kabuu started developing it. Then the dispute arose and the deceased sought to evict him.

The Appeal court agreed with the decision of the African court and rejected the appeal by the deceased. The panel of elders, on 30th March, 1981 had also decided similarly

The Petitioner stressed that the late Peter then filed a case in High Court for declaration of his right over the land but later withdrew it. That fact itself shall have not effect on the aforesaid two decisions. Moreover, the objector has produced letters written by the said Peter in the year 1981 and 82 to Mr. Njonjo MP for Kikuyu Constituency and to the District Officer wherein he had mentioned the reason of his agreeing to the deceased being registered as proprietor of the amalgamated parcels of land.

I also tend to agree with submissions from the learned counsel of the objector that the reason for the deceased to evict the late Peter Kabuu, which was his refusal to share other piece of land, cannot be considered by this court. Neither before any of the two courts which heard and determined the dispute between the father (the deceased herein) and son (the late Peter Kabuu) nor before this court the said fact is pleaded. Placing the same during submissions is not only irregular but is improper and prejudicial to the objector. I shall thus refuse to take that submissions into my consideration.

The late Peter Kabuu, as per the records, had bought one acre and thus the parcel of land Kabete/Kabete/82 shall be divided as proposed by the objector, i.e. the remaining portion of the parcel of land be divided in three equal portions amongst three houses. A plan attached to the bundle of documents (page marked 'b') produced can be a guideline of its distribution.

As regards 2nd property namely Kabete/Kabete/T156. It is agreed by both parties that half thereof be given to the objector's family and half to be given to Edward Ngugi Thairu as proposed by the Administrator.

It is also not opposed that L.R. Kabete/Kabete/80 be given to the third house.

The other remaining properties Kabete/Kabete.161, Kabete/Kabete/81 be devolved as proposed by the Administrator in summons for confirmation dated 30th January, 2001 and filed on 16th February, 2001.

No order as to costs. Certificate of confirmation be issued accordingly.

Dated, Signed and Delivered at Nairobi, this **21st** day of **July, 2009**.

K.H. RAWAL

JUDGE

21.7.09