



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 339 of 2006

IN THE MATTER OF THE ESTATE OF HUMPHREY GITHINJI IKAMA DCD

AND

MARY WANJIRA GITHINJIPETITIONER

RULING

The wife of the deceased MARY WANJIRA GITHINJI petitioned for grant of letters of administration intestate in respect of this estate. In so doing she stated those who were surviving the deceased to be herself, Jeniffer Wanjiru Githinji unmarried daughter, Justa Njeri Muchemi married daughter and Jane Wambui Kahuha a married daughter. Amongst the assets that were listed as belonging to this estate in that petition was L.R. NO. NYANDARUA/PESI/69 hereinafter called the suit property. Grant of letters of administration intestate was issued on 16th November 2006. By a summons dated 30th March 2007 the administrator applied for confirmation. In that application distribution of the suit property was sought in the following manner.

L.R. NO. NYANDARUA/PESI/69

- a) MARY WANJIRA STEPHEN 7 ACRES
- b) MARY WANJIRA MUCHEMI 6 ACRES
- c) MARY WANJIRA KIHUHA 6 ACRES
- d) HUMPHREY GITHINJI 22 ACRES
- e) GITHINJI KIHUHA 6 ACRES
- f) GITHINJI MUCHEMI 6 ACRES
- g) EVAN MURUGA 6 ACRES
- h) JANE WAMBUI KIHUHA 20 ACRES
- i) JENIFFER WANJIRU GITHINJI 10 ACRES
- j) JUSTA NJERI MUCHEMI 20 ACRES

- k) WAIHENYA MUCHEMI 6 ACRES
- l) NJERI WANJIRU 5 ACRES
- m) MARY WANJIRA GITHINJI 7 ACRES
- n) NAOMI WANGARI KARANJA 30 ACRES
- o) JOSPHINE WANGARI NJOROGE 10 ACRES
- p) MWANGI KIHUHA 5 ACRES
- q) IKAMA KIHUHA 5 ACRES
- r) GACHAU MUCHEMI 5 ACRES

The matter came up before court for the hearing of the application for confirmation of grant on 13th July 2007. The court being satisfied that all the surviving beneficiaries of this estate had consented to the mode of distribution proceeded to confirm the grant as prayed. Naomi Wangari Karanja (hereinafter called Naomi) has now filed a summons dated 19th march 2008. In that application she seeks from this court the following prayers: -

1. *That the distribution of the estate herein be stayed pending the hearing and final determination of this application or until further orders of this court.*
2. *That the certificate of confirmation of grant issued by this court on the 13th July 2007 be set aside as the respondent concealed something material to the facts in that although the applicant is named as one of the beneficiaries, she was not involved in confirmation of the Grant.*
3. *That this order be served upon the District Land Registrar, Nyandarua for his immediate action.*
4. *That costs of this application be provided for.*

Naomi in her supporting affidavit and in the further affidavit sworn on 22nd July 2008 stated that the suit property was purchased between her late husband and the deceased herein. The deceased herein was the husband of the administrator. To prove that the property had been jointly been purchased she relied on a document entitled “*Arb cont*”. She stated that in view of that she was entitled to 84.6 acres of the suit property. That the administrator failed to inform her that she had petitioned for grant and also failed to cite her. That she only came to know of this succession matter when she attended the land office and found the grant registered under the title. The application was opposed on many fronts. The administrator deponed that the application was incompetent since the estate had been distributed to various beneficiaries. The administrator annexed a certificate of official search to prove the same. What however that search shows is that the suit property is jointly registered in the name of the administrator and 18 other beneficiaries. What is clear from that search is that the individual beneficiaries have not obtained their individual titles. In a further affidavit sworn by the administrator she annexed an affidavit sworn by the deceased in respect of a suit between Naomi and the deceased. This is HCCC No. 17 of 2003, Nyeri High Court. In that affidavit the deceased denied having purchased the suit property jointly with Naomi’s late husband. The learned advocate Wahome Gikonyo argued amongst other arguments that the court had no power to stay distribution once there was confirmation. In respect of prayer two he argued that to grant the prayer would be an exercise in futility. In my view the most persuasive argument by the administrator was that Naomi was abusing the process of the court because alongside the present application she was also seeking the revive HCCC No. 17 of 2003 which had been marked as abated after the death of the deceased herein. In that suit HCCC No. 17 of 2003 Naomi is seeking a declaration that the deceased herein was holding the suit property in trust for himself and her. In the present application the subject of this ruling Naomi is seeking to set aside the distribution of this estate. I have considered the

matter and the arguments presented before me. What is of concern is that the administrator failed to include Naomi as one surviving the deceased. The administrator waited until confirmation to include her name. Even then it is clear from the record that the administrator did not inform Naomi about the existence of this succession. Naomi therefore did not have the opportunity to object to the amount of acreage of the suit property she was given. Had Naomi been named as one surviving the deceased the court would have insisted at confirmation to have her consent to mode of distribution. It is also noteworthy that the administrator when she petitioned for the grant did not supply to the court a letter of the chief. Justice is all about fairness. Considering the matters before me I find that Naomi deserves the order she seeks. However the concern is that Naomi has two matters before court all relating to the suit property. The present state of affairs requires that an interim ruling be issued and subsequently when Naomi clarifies the issue of the two matters a final ruling will be delivered. The court in this interim ruling relating to chamber summons dated 19th march 2008 grants the following orders:-

1. ***The court does hereby grant a stay of distribution of property NYANDARUA/PESI/69 until further orders of this court. This order shall be registered against the said title and shall be served upon the District Land Registrar Nyandarua.***
2. ***The court will give its final ruling in respect of the summons dated 19th march 2008 after knowing the fate of HCCC 17 of 2003 Nyeri High Court in order to avoid abuse of the court process. To this end Naomi Wangari Karanja shall file an affidavit in this matter indicating the outcome of the application to reinstate HCCC 17 of 2003 Nyeri High Court and in that affidavit she will inform the court which of the two matters that is this matter and HCCC 17 of 2003, she wishes to pursue.***
3. ***This matter shall be fixed for mention at the reading of this ruling with a view to the court giving a date of delivery of the final ruling on a summons dated 19th march 2008 on the applicant fulfilling the requirements in No. 2 above.***
4. ***The costs of this summons dated 19th march 2008 shall be determined at the final ruling.***

Dated and delivered at Nyeri this 9th October 2008.

MARY KASANGO

JUDGE