



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Succession Cause 826 of 2003

IN THE MATTER OF THE ESTATE OF KURIA KIARII (DECEASED)

GRACE WAMBUI KURIA.....APPLICANT

V E R S U S

DAVID KARUGA KURIA.....1ST RESPONDENT

WANJIRU KURIA.....2ND RESPONDENT

R U L I N G

The Letters of Administration Intestate in respect of the estate of the late KURIA KIARII (deceased) who died on 22nd May 1973 was issued to Daniel Karuga Kuria and Wanjiru Kuria, son and 1st widow respectively of the deceased on 27th January 1993 by the Senior Principal Magistrate Court at Kiambu in Succession Case No. 222 of 1988 according to the confirmed grant.

According to the confirmed grant that was issued on 20th December 1996, the deceased parcel of land known as KOMOTHAI/KIBICHOI/743 is to be shared equally by:

- a) Mrs. Teresia Wanjiru Kuria “A”
- b) Mrs. Wanjiru Kuria “B” and
- c) Mrs. Wambui Kuria.

Each to get her own Title Deed. Grace Wambui Kuria the Applicant and the 3rd widow of the deceased applied for the revocation of the said grant on the grounds that the grant was:

- a) The grant was defective in substance as the same was applied for secretly without involving all the parties concerned.
- b) Obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.
- c) The grant was confirmed to the petitioner who proceeded to subdivide the land parcel No. KOMOTHAI/KIBICHOI/743 unequally contrary to the confirmed grant.

The controversy seems to have been sparked off when the surveyor who was instructed by the petitioner went to fix the beacons on the suit premises while following the confirmed grant. It is clear

that the portion that was occupied by the objector was adjusted and thus must have extended to the portions occupied by the other widows.

According to the petitioners the deceased subdivided his land during his life time and indicated the boundaries by placing the traditional boundary fence called “Mukungungu” way back in 1968. The petitioner relied on their own evidence and also called the second widow and two of the deceased sons who testified and corroborated the petitioner evidence.

It is clear from the petition evidence that there are a few contradictions as follows:

First PW1, Mrs. Wanjiru Kuria “B” the second widow who gave her evidence de ebenese said that when the deceased divided the land among the 3 widows her sons were not present. She said the sons were young and still in school.

Secondly she said that the family did not agree that the land be divided equally but according to the wishes of the deceased.

Thirdly she claimed that she saw the surveyor who carried out the subdivision.

The other major discrepancies are in respect of the evidence of the 1st Petitioner David Karuga Kuria who sought to have the confirmed grant rectified to indicate that the suit premises be distributed according to the wives of the deceased and also to include two other Assets namely Land at Kamuru and a house at Kariobangi in Nairobi.

One thing that cut across from the evidence of all the witnesses is that the deceased had divided his parcel of land namely Land Title No.

KOMOTHAI/KIBICHOI/743 during his life time and that exercise was witnessed by certain elders. The three widows have been in occupation of their respective portions until the surveyor attempted to adjust to place the beacons and the titles were allegedly issued not according to the grant but the wishes of the Petitioner.

The said titles did not conform with the order of the confirmation and therefore it is intriguing how the titles were issued and if so what order was being followed. It is therefore clear that there are some irregularities which I detect from the proceedings leading to the confirmation of the grant.

I have read the subordinate court file and records which show that the objector herein duly consented to the petition for the Grant of Letters of Administration. She duly signed form 38 on 10th December 1992. However there is no indication that she participated in the proceedings for confirmation. There is no indication that she gave her consent to the said proceedings.

The other anomaly noted is that some Assets of the deceased were left out of the Grant. Furthermore and even more glaring is the indication on the Grant that the land be shared equally among the three widows. The deceased herein died in 1973 before the Law of Succession Cap 160 became operational. In this case his estate should be determined to the accordance in deceased’s customary law and in this case the Kikuyu customary law whereby the estate of the deceased was shared equally among the wives.

The deceased in this case had three wives who survived him. The evidence is clear that each widow had settled in her respective portion of land and undertaken developments. I think this status quo if disturbed will disturb the equilibrium of how this large family has settled. At this stage of these proceedings my duty is to either revoke the Grant, but in the interest of justice, and since I heard all the evidence in the distribution as well, it would not be prudent to gloss out the issue of distribution which in my humble view is the cause of dispute.

I have also taken into consideration that the parties herein will not give evidence again on the same issue and therefore determining the issues once and for all will be in the best interest not only of justice but

the heirs who have been in court since 1992.

In this regard, and as pointed earlier there are fundamental problems with the confirmed Grant. I have not noted any irregularities with the petition for the Grant and it would appear the whole family land had agreed on how to file the petition for grant of letters of administration. The problem is the confirmed grant which both parties are not satisfied with in that the petitioner sought for revocation and the Applicant sought for rectification so that the land is not shared equally and the other properties of the deceased are included in the grant.

Accordingly I hereby revoke the confirmed Grant dated 20th December 1996 and the same should be returned for conclusion. The Grant is therefore confirmed in the following terms:

That the deceased parcel of land known as KOMOTHAI/KIBICHOI/743 be shared amongst the deceased widows namely

- a) Teresia Wanjiru Kuria "A"
- b) Wanjiru Kuria "B" and
- c) Wambui Kuria

The said land be divided according to the way each widow has settled. Since the house of Wambui Kuria's portion is smaller, she should be compensated with the parcel of land being at Kamuru so that her share is made equal to that of the 1st widow the rest of the land be shared equally amongst the (3) three houses. The house at Kariobongi should be sold and the proceeds shared equally among the 3 widows since it is not possible to divide it among the three widows alternatively it can be held by the three widows equally for life and in trust of their children.

The Administrators should therefore present to this court the schedule of distribution in accordance with this ruling within three (3) months of this ruling.

It is so ordered.

Ruling read and served on 20/1/06

M. Koome

Judge