



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI
SUCCESSION CAUSE 292 OF 1991

IN THE MATTER OF THE ESTAE OF KAPAITO OLE PARIMBAI (DECEASED)

RULING

The late Kapaito Ole Parimbai (deceased) died testate on 27th October 1990. The grant of Letters of Administration were in the first instance issued to his grand daughter Teresia Nasieku Kineia on 2nd September 1991 and confirmed on 20th March 1992.

Mary Wanjiku Kapaito the third widow of the deceased successfully applied for the revocation of the said grant.

By a well reasoned judgment by Hon. Aganyanya J, delivered on 10th May 2001, the grant of Letters of Administration which was issued to Teresia Nasieku Kineia was revoked and the grant of probate of written will was issued to Mary Wanjiku Kapaito on 10th May 2001.

Before the grant was revoked, Teresia Nasieku Nsiekue Kinei had purportedly transferred the property known as Ngong/Ngong/10249 (hereinafter called the suit premises) to Rose Agiza Keyonzo the applicant in this matter. According to the will of the deceased which was upheld by the above judgment, Mary Wanjiru Kapaito is named as the Executrix and the deceased bequeathed to her the suit premises.

Pursuit to the said judgment, and due to the failure of Teresia Nasieku to transfer the suit premises to the Executrix as per the judgment applied to this court for an order directed to the Land Registrar to cancel titles over

NGONG/NGONG/4100

NGONG/NGONG/10249

LTK/ENKARIAK – RONGEMA/789 and issue the same to herself.

That application although served upon Teresia Nasieku was not opposed and therefore the orders were granted as prayed.

The applicant in this present summons who had purchased the suit premises from the previous administrator was not enjoined in those proceedings which lead to the cancellation of her title and the application was not served upon her.

I have carefully read the judgment by Hon. Aganyanya J. especially page 18 where the court made the following observation:

“As regards plot number Ngong/Ngong/10249, though included in the deceased’s will it was

agreed by both parties, 3rd objector included that it had been given to Ziporah Naigu (PW 2), but that the respondent had sold it and given Naigu only Kshs.100,000/=. The petitioner herself agreed to have sold this plot at Kshs.350,000/= and that when she gets the balance she would pass it over to the said beneficiary. The issue must rest between the two.

The court therefore upheld the deceased wishes as expressed in the will except in respect of Title Number Ngong/Ngong/4100 and Ngong/Ngong/10249 (Suit premises) which were not vested upon the executrix.

In view of the above judgment I am of the view that the applicants application dated 1st February 2005 that seeks to enjoin the applicant herein in these proceedings and were to review the orders made and issued on 28th July 2003 has merit.

In this regard, I am of the humble view that there is an error apparent on the face of the record arising from an omission as the attention of the court was not drawn to the said judgment.

Having given careful thought to the said judgment, it is clear the judgment of the court allowed the will as drawn by the deceased but excluded two properties namely Ngong/Ngong 10249 and Ngong/Ngong/4100 from the properties to vest upon the Executrix.

It is clear that when the Executrix made the application seeking for orders of transfer of these properties, she definitely misled this court into issuing the orders over the two properties which were excluded from the will of the deceased by the court.

Consequently therefore in the interest of justice the order made on 9th July 2003 and issued on 28th July 2003 must be reviewed/varied so that it is in tandem with the judgment of this court to the extent that parcel Number Ngong/Ngong/10249 and Ngong/Ngong/4100 should not have been registered in the name of MARY WANJIKU KAPAITO.

The Title Number Ngong/Ngong/10249 should revert to the previous registered owner ROSE AGIZA NDEYI KEYONZO.

Although there was no application over Ngong/Ngong/4100, upon reading the said judgment it is clear that the two titles were left out of the deceased will and in exercise of the inherent powers vested in this court vide Section 73 of the P & A rules to ensure that the ends of justice are met, I would order that the title known as Ngong/Ngong/4100 should also revert to the persons who were registered as proprietors.

Due to the unique nature of this application each party shall bear their own costs.

It is so ordered.

Dated and delivered this 10th day of June 2005.

**MARTHA KOOME
JUDGE**