



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1506 OF 1997

IN THE MATTER OF THE ESTATE OF GEORGE RAGUI KARANJA (DECEASED)

LINCOLN KIMWAKI RAGUI

GEORGE RAGUI KARANJA.....APPLICANTS

VERSUS

KOIGI WA WAMWERE NELLY WANJIKU KURIA.....RESPONDENTS

AND

SIMON MUCHENE KARANJA RAGUI....PROPOSED INTERESTED PARTY

RULING

1. This is the 4th attempt by the Estate of Edward Ragui Karanja (a deceased beneficiary of this estate) to directly or indirectly seek to overturn or circumvent decision of Musyoka J of 3rd of May 2017. In particular paragraph 8 thereof that stated as follows

“Review of the confirmation orders could be a little more controversial. I note that the Respondents do not support the proposed review. The proposed review would result in distribution that is equitable to all.

The Law of Succession Act, Cap 160 of the Laws of Kenya, does not discriminate against daughters, whether married or not. I am satisfied that the proposed review is merited. No one would be disadvantaged or prejudiced by the proposed review, and the same has the support of the majority of the beneficiaries/survivors. The decision on the ground should take into account the situation on the ground, in terms of occupation, possession and developments.”(emphasize added)

2. The said Estate of Edward Ragui Karanja seem dissatisfied with the ruling due to the developments that the family undertook pursuant to the confirmed grant of 1999, since revoked.

3. As stated earlier there have been several attempts at overturning Musyoka J’s ruling. Such first attempt was on the 20th of November 2017 when counsel representing the estate sought for directions orally and where he indicated that the court order was not reflected on the certificate of grant issued pursuant to the order and sought directions as to what would be fall the initial beneficiaries.

4. Musyoka J at the point explained his ruling further where he stated;

“1. The parties appear to be in disagreement on what the court meant by development on the ground. The court presumes that the beneficiaries are in occupation and may have affected development on the ground by way of farming on the soil or putting up structures on it. That is what ought to be taken into account.”

5. The 2nd attempt was an application by a proposed interested party who ostensibly bought a portion allocated to this family to enable Margaret Ragui, mother to the 4th Administrator and the current Applicant a portion thereof. Of interest to the current application, is the allegation by the said interested party that he bought the portion for 50 million and had paid a substantial amount to enable the said Margaret complete residential flats and other amenities.

6. The 3rd attempt was an application by Lincoln Kimwaki Ragui and George Ragui Karanja the Administrators of the estate of the late Edward Ragui seeking to modify the order of 3rd May 2017 on grounds that on issuing the order the court failed to take into account the fact that the developments on the ground could exceed the beneficiary's allocation upon redistribution (sic).

That development on the ground was subject to valid certificate of confirmation of grant and to penalize the beneficiaries who acted pursuant to the said certificate would be to subject the said beneficiaries to injustice.

In support were annexed pictures depicting the residential flats a parking lot, & unfinished building etc.

7. The intended interested party is a brother the Lincoln & Edward Ragui and a son of Margaret. He has come to court yet again to safeguard the development done by his family claiming he financed the building of the residential flats.

8. I will not go to the evidence as to who built or financed the buildings being safeguarded, save to note that the construction of the residential flats is by the family of the late Edward Ragui. No doubt it is a substantial investment by the said family pursuant to a grant that has since been revoked.

9. The various applications by the estate of Edward Ragui is obviously out of apprehension of likely lose of their investment and likely benefit of the same by others. The question is whether the way of applications by different family members and third parties will resolve the matter?

10. In my view the various applications have turned this court into a circus and are an abuse of court process as the apprehension and fear are misplaced and premature. This court ordered each party to propose subdivision on the ground and to back the same with a surveyor's report. The matter is still pending.

11. Further, Musyoka J was categorical that developments and occupation will have to be taken into account, of course it is expected that there will be give and take on both sides to accommodate the situation on the ground.

12. The Applicant seeks for;

(1) Matter be certified urgent.

(2) That this court be pleased to grant leave to Simon Muchene Karanja Ragui to be enjoined to these proceedings as an interested party.

(3) That this court be pleased to grant unconditional leave to the interested party/applicant to lodge a response to and participate in the determination of the notice of motion application dated 30/11/2018 lodged by Lincoln Kimwaki Ragui and George Ragui Karanja.

(4) That this court be pleased to find, hold and declare that the interested party/applicant wields bonafide creditor's interest in the development standing on LR No. Dagoretti/Uthiru/146 comprising a four-storey apartment complex.

(5) That this honourable court be pleased to quantify the interested party/applicant's creditor's interest in the development standing on LR. No. Dagoretti/Uthiru/146 comprising a four-storey apartment complex.

(6) That this court be pleased to order that the creditor's interest in the development standing on LR. No. Dagoretti/Uthiru/146 comprising a four-storey apartment complex be paid to the interested party/applicant from the estate of George Ragui Karanja (deceased) and/or that such creditor's interest be factored into the distribution of the estate of George Ragui Karanja (deceased) as a percentage of said estate upon full valuation thereof.

13. The application is based on grounds that the applicant based on the grant issued on 27th May 1999 commenced development of Dagoretti/Uthiru/146 comprising of housing units and expended Kshs.30,000,000/- on the said project and redistribution is likely to affect him due to the magnitude of the development.

14. Prayers 1, & 3 of the said application have been taken over by events.

As concerns prayers 4, 5 and 6, the applicant who described himself as a grandson of the deceased, claims to have a stake in what is due to his later father's estate and rightly so as he cannot directly lay a claim to his grandfather's estate. He claims development on the land and which other beneficiaries of his father's estate and third parties allied to them seem to equally claim. He is not a creditor of his grandfather's estate as he purports. If he financed his father's estate that is an internal family affair.

15. As stated earlier in this ruling the fear by the Applicant and his family for now is unfounded as the exercise of redistribution is yet to be done and has been delayed by the various applications. As this court stated in its ruling of 25th June 2020

"20. The Court has observed the hard stand taken by both sides. Court orders must of necessity be obeyed and as consideration is being made to court orders, parties who are family and find themselves in tricky situations, ought to be magnanimous, certainly selfless, equitable and kind. Clearly none of the two sides are willing to accommodate the other so

as to settle this long outstanding issue.

21. Equitable is not necessarily equal 100%. Secondly in the scenario, sacrifices have got to be made by either side so as to be fair and just to all the children of the deceased and/or their offspring.

22. Parties must realize that we have moved away from the 1999 grant, there is now a second confirmed grant and they have to work round it as a matter of necessity unless other orders are to the contrary are made.

23. This court visited the properties in question and yes there are developments, crops, a graveyard and some portions leased out etc. The court observed that some sections/portions may be more valuable than others and in achieving equity, parties may have to consider;

i. The terrain of the entire Estate as a key factor.

ii. Actual development/occupation and not necessarily earlier demarcations or fencing

iii. Compensation by one party to another, if need be, in order to arrive at an equitable distribution”

16. The court in all its rulings has not been oblivious of the situation on the ground. The impugned ruling was not meant to punish or take away or cause any injustice but to ensure that justice was delivered by ensuring all children of the deceased would have a slice of his estate.

17. The application is thus misplaced, an abuse of court process and meant to delay the execution of Musyoka J’s ruling.

18. The same is declined with costs.

DELIVERED AND SIGNED AT GARISSA THIS 10TH DAY OF FEBRUARY, 2022

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ALI ARONI

JUDGE