

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1408 OF 2012

IN THE MATTER OF THE ESTATE OF MBUGUA GICHIRE ALIAS DANIEL MBUGUA GICHIRE (DECEASED)

DAVID NGINYE MBUGUA.....1ST ADMINISTRATOR/1ST APPLICANT

JOSEPH THIONG'O.....2ND ADMINISTRATOR/2ND APPLICANT

VERSUS

MARY WANJIRU MBUGUA.....RESPONDENT

RULING

1. The deceased Mbugua Gichire alias Daniel Mbugua Gichire died intestate on 2nd December 1999. He was survived by two sons and a daughter. The sons were the applicants David Nginye Mbugua and Joseph Thiong'o, and the daughter was the respondent Mary Wanjiru Mbugua. On 3rd July 2012 the applicants petitioned this court for the grant of letters of administration intestate in which they stated that the deceased had left one parcel of land LR No. Dagoretti/Waithaka/1351, measuring 0.94 Hectares. The respondent gave her consent to the petition. The grant was issued on 23rd November 2012. It was confirmed on 27th November 2013. The applicants shared the parcel of land equally.

2. On 5th July 2019 the applicants filed the present application seeking the revocation of the grant as confirmed. The application was brought against the respondent. The application was brought under **section 76 of the Law of Succession Act (Cap 160)** and **rules 44 and 73 of the Probate and Administration Rules**. Their case was that, at the time the deceased was alive his land was LR No. Dagoretti/Waithaka/72 that measured 4 acres. Before he died, he called a family meeting and gave the respondent 115 feet by 43.5 feet of the parcel. When he died, and unknown to the applicants, the respondent in 2001 forged his signature to subdivide and transfer a portion measuring 0.40 Hectares to herself. This portion was larger than what the deceased had given to her. The portion she got was LR No. Dagoretti/Waithaka/1350.

3. The applicants asked that after the revocation of the grant, titles LR Nos Dagoretti/Waithaka/1350 and 1351 be cancelled and they become the initial LR No. Dagoretti/Waithaka/72 in the name of the deceased.

4. The respondent was served but did not respond to the application. The applicants' advocate Mr. Kinyanjui filed written submissions which I have considered.

5. The application cannot be granted. The applicants cannot complain against the grant that was issued and confirmed to them following the petition they themselves filed. They were not guilty of non-disclosure of any material fact, and neither was the grant obtained fraudulently by them. Their complaint was that, without a grant, the respondent had defrauded the estate of the deceased of a parcel of land; that she had forged the deceased's signature and unlawfully caused the subdivision of the land and given herself a portion of it. If that is their case, and now that they have the grant, what is open to them is to move to the Environment and Land Court under **section 13 of the Environment and Land Act** and **Article 162(2)** of the Constitution to have their grievance heard and determined.

6. Of course, the applicants will have to deal with the question of delay. They will deal with the question why, if the deceased left LR No. Dagoretti/Waithaka/72, they came before this court in the petition saying that he had left LR No. Dagoretti/Waithaka/1351. But all that will be before the court empowered to hear and determine the question of the ownership of LR No. Dagoretti/Waithaka/1350.

7. I determine that the present application is incompetent and misconceived. I dismiss it. I make no order as to costs as this was a family dispute.

DATED and DELIVERED NAIROBI this 16TH day of JUNE 2021.

A.O. MUCHELULE

JUDGE