

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1109 OF 2006

IN THE MATTER OF THE ESTATE OF GITHU MUHOHO (DECEASED)

RAPHAEL MBUCHO MUHIA.....APPLICANT

VERSUS

GABRIEL GITHU MUHOHO.....RESPONDENT

RULING

1. The deceased Githu Muhoho died intestate on 9th November 1995. He left a widow Beatrice Wanjiku Githu and eight children who included Anthony Muhoho Githu. His estate comprised LR No. Kiganjo/Nembu/1157. Beatrice and Anthony petitioned for the grant of letters of administration intestate. The grant was issued to them on 6th August 2006, and confirmed on 12th March 2007. Anthony got 4.19 acres of the deceased's parcel.
2. It does appear not disputed that, somewhere along the line, the applicant Raphael Mbucho Muhoho bought 2 acres of the 4.19 acres from Anthony. When Anthony failed to transfer the 2 acres to the applicant, the applicant filed **Gatundu SRMCC No. 317 of 2010** against him on 4th April 2012. A consent was recorded in which Anthony was to transfer the two acres to the applicant. At the time LR No. Kiganjo/Nembu/1157 from which the 2 acres were to be excised was still in the name of the deceased.
3. Anthony died on 5th May 2014. He left a son Gabriel Githu Muhoho (the respondent). Succession proceedings have not been filed following the death of Anthony. The respondent is therefore not the legal representative of the estate of his late father.
4. The present application by the applicant seeks to have the court direct the Deputy Registrar of this Court to execute all documents to effect the transfer of 2 acres from LR No. Kiganjo/Nembu/1157 to him. He stated that the respondent has refused to sign the relevant documents to effect the transfer to him. The application was served but did not receive any response.
5. The respondent does not have any legal obligation to transfer any land to the applicant. There was no land transaction between the two. The transaction was between the applicant and the respondent's late father, Anthony. The respondent has no grant of letters of administration in respect of the estate of his father, and cannot therefore legally deal with the applicant over the said land transaction.
6. Secondly, it would appear that, despite there being a certificate of confirmation distributing the estate of the deceased, land parcel LR No. Kiganjo/Nembu/1157 has not been subdivided to the respective beneficiaries. I do not know whether Beatrice Wanjiku Githu is still alive. If she is, she is the only one who can complete the administration of the estate of the deceased. It is upon that completion that the applicant can benefit from what is due to Anthony.
7. I find the application incompetent and misconceived, and dismiss it with costs.

DATED and DELIVERED at NAIROBI this 7TH day of JUNE 2021.

A.O. MUCHELULE

JUDGE