



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION NO. 411 OF 2011

IN THE MATTER OF THE ESTATE OF GATHUA KIBOCHA GITHUNGU(DECEASED)

RUTH GATHONI GACHARA.....APPLICANT

VERSUS

DAVID GITUKU KIBOCHA.....1ST RESPONDENT

EVANSON GITHINJI KINYANJUI.....2ND RESPONDENT

RULING

1. This case was concluded as per the judgement of Matheka, J delivered on 19/10/2018. The deceased had several assets which were distributed to the beneficiaries in the said judgement. L.R Konyu/Baricho/441 was to be shared equally between Ruth Gathoni Gachara and her sister. The certificate of confirmation of grant has not been issued to date.
2. On 31/01/2019, this matter was mentioned before the judge and the counsel for one of the beneficiaries one Ruth Gathoni Gachara Ms Maina holding brief for Nganga Munene & Company informed the court of the death of one of the beneficiaries Mary Wambura Mwangi and requested to be allowed to put in an affidavit to confirm the death. The court granted the beneficiary 14 days to file the affidavit but she failed to comply.
3. On 25/06/2019, an affidavit sworn by Ruth Muthoni Gachara was filed confirming the death of Mary Wambura Mwangi with a death certificate attached to it. The matter was mentioned before the judge on 25/06/2019 and the matter fixed for another mention on 28/06/2019 and the Judge declared its contents insufficient because it did not indicate whether the deceased beneficiary Mary Wambura had any children and neither did it indicate who was to take her share.
4. On 3/05/2021, Ms Maina for Nganga for the applicant referred this court to the same affidavit and made an oral application that Ruth Gathoni Gachara be registered sole owner of L.R. Konyu/Baricho/441 since her sister who was entitled to half share was deceased. I note from the judgement that Ruth in her testimony told the court that her sister whom she did not name was deceased at the time of hearing of the summons for revocation. This is supported by the copy of death certificate attached to the affidavit of Ruth sworn on 25th July, 2019. It shows the date of death as 6/02/2009. Although the court had the information that the sister of Ruth was deceased, it went ahead to bequeath the land L.R. Konyu/Baricho/441 to Ruth and her deceased sister in equal shares.
5. Ruth told the court that her father who was the original owner of L.R Konyu/Baricho/441 had only two children, herself and her deceased sister and that the two had resided on the land till each one of them got married. This is a clear indication that the sister Mary Wambura Mwangi had a family who could be heirs of the half share given by the court. It is an obligation for Ruth to avail the survivors of her sister to the court to inherit the half share but not to have it registered in her name unless she proves before the court that there are no heirs surviving her sister.
6. Just like Judge Matheka, I find this affidavit of Ruth Gathoni Gachara insufficient to justify interference with the judgement of trial judge delivered on 19/10/2018. Notably, there is no formal application to review the judgement that has been filed by the said Ruth.
7. The counsel knows well the correct procedure to follow in a matter of this nature. Her client was directed to provide more information on whether the deceased beneficiary had children who would of course be entitled to take their deceased mother's share. The said directions were not complied with for about two(2) years and no explanation was given. The counsel is aware and ought to advise his client that the share of a deceased beneficiary cannot be given to any other person through an affidavit even assuming one is entitled.
8. It is unusual that in this succession case determined about two years ago, the certificate of confirmation of grant has never been issued to this date. The right thing to do in this matter is to have the certificate issued in terms of the judgement of the court and thereafter for the administrator/beneficiary to make the proper formal application to the court to address the fate of the share of the deceased beneficiary.

9. I find the oral application by the counsel misconceived and incompetent and I hereby decline to issue any orders regarding the share of the deceased beneficiary at this stage

10. However, in the interests of justice and in adherence with the overriding objective on expeditious disposal of cases, I thereby make the following orders/directions:-

a) That the certificate of confirmation of grant be issued forthwith in terms of the judgement delivered on 19/10/2018

b) The administrator/beneficiary do file the formal application to address the issue of the share of the late Mary Wambura Mwangi within twenty one(21) days from the date of this ruling and that the same be served on the family of the deceased beneficiary.

11. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 3RD DAY OF JUNE, 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 3rd day of JUNE 2021