



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1751 OF 1993

IN THE MATTER OF THE ESTATE OF JAMES CHEGE NDWARU (DECEASED)

MARY WACHUKA CHEGE.....APPLICANT

VERSUS

SUSAN NJOKI CHEGE.....1ST RESPONDENT/ADMINISTRATOR

JANE WANJIRU CHEGE.....2ND RESPONDENT/ADMINISTRATOR

JAMES WAINAINA CHEGE.....3RD RESPONDENT/ADMINISTRATOR

GEORGE MBUGUA CHEGE.....4TH RESPONDENT

ELIZABETH WANJIKU CHEGE.....5TH RESPONDENT

REGINA GATHONI..... 6TH RESPONDENT

ESTHER RUGURU CHEGE.....7TH RESPONDENT

MARY WACHIKA CHEGE.....7TH RESPONDENT

RULING

1. When on 9th November 2017 this court shared the estate of the deceased John Chege Ndwaru, it was on the basis that Dagoretti/Riruta/T.36 was part of the estate. The parcel was ordered to be shared equally among the children of the deceased who were John Ndwaru Chege, Salome Wanjiku Chege, Mary Wachuka Chege (1st administrator), Susan Njoki Chege, James Wainaina Chege (3rd administrator/2nd respondent), Jane Wanjiru Chege (2nd administrator), Elizabeth Wanjiku Chege, David Munguratu Chege, George Mbugua Chege (4th administrator), Esther Ruguru Chege and Regina Gathoni.

2. The applicant Judy Njeri Joel is the granddaughter and one of the administrators of the late Joel Njuguna Gitau following the **Succession Cause No. 968 of 2010** at Nairobi. Her case was that at the time the deceased died, and up to the time his estate was distributed, Dagoretti/Riruta/T.36 did not belong to him as it was registered in the name of the late Joel Njuguna Gitau. She annexed a certificate of official search. Her application dated 3rd March 2020 and filed on 19th March 2020 sought that the judgment of this court be reviewed in relation to the parcel of land by excluding it from the deceased's estate.

3. The applicant's supporting affidavit showed that the administrators had in **HCCC No. 529 of 2000 (OS)** filed an adverse possession claim against the late Joel Gitau Njuguna. The claim was dismissed for want of prosecution. The administrators filed a response to the present application to confirm to the court that the suit has since been reinstated following the application.

4. It is therefore evident that at the time that the administrators herein were distributing the estate of the deceased they knew that Dagoretti/Riruta/T.36 was not the free property of their late father (the deceased). They knew this was a disputed property. They stated that the deceased had vide a sale agreement dated 27th March 2006 bought the parcel from the late Joel Gitau Njuguna but that the transfer had not been effected. This is information they were required to give to this court at the time of the confirmation of the grant of the estate of the deceased.

5. I consider that the fact that Dagoretti/Riruta/T.36 was a contested property, and was in the name of the late Joel Gitau Njuguna, was material information that was not availed to the court when it distributed the same to the family of the deceased. Under **Order 45 rule 1 and 2** of the **Civil Procedure Rules**, I review the judgment of this court that was delivered on 9th November 2017 by excluding Dagoretti/Riruta/T.36 from the estate of the deceased. This will allow for the dispute over the parcel in **HCCC No. 529 of 2000 (OS)** to be heard and determined. If at the end of the day the parcel is determined to belong to the deceased, it will be shared as ordered in the judgment herein.

6. Costs of this application shall follow the event.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF JULY 2021

A.O. MUCHELULE

JUDGE