



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION NO. 588 OF 1996**

**IN THE MATTER OF THE ESTATE OF PENINAH NJERI MUTHIORA (DECEASED)**

**RULING**

1. The contentious matter herein relates to the estate of Peninah Njeri Muthiora (deceased), who died intestate over 27 years ago on 15.6.94. The record shows that the deceased was survived by 2 children, Dishon Muchene Muthiora (Dishon) and Elizabeth Wanjiku Muthiora (Elizabeth). A grant of letters of administration in respect of the deceased's estate was on 11.6.96 issued to Dishon and confirmed on 18.4.97 and her estate which comprised of Plot No. Dagoretti/Riruta/1837 was distributed to her children. Dishon was to get 0.36 acres while Elizabeth was to get 0.13 acres.

2. By a summons dated 11.2.98, Samuel Kahare Gage (Samuel) sought the revocation of the grant on the ground that Dishon had failed to disclose that the deceased had 5 other children. The was revoked and a fresh grant was on 23.3.99 issued to Dishon and Samuel. Dishon filed summons for confirmation of grant dated 13.10.99 and proposed that Plot 1837 be inherited by Elizabeth solely. This is because all the children of the deceased save for her married daughters had inherited their father's land and each got 3.5 acres. Plot 1837 comprising 0.49 acres was given to the deceased. Elizabeth's marriage failed and she returned home with her 5 children and settled on Plot 1837 from which she derived her livelihood. Dishon averred in his affidavit in support of the summons that it had been agreed by the deceased and all the children that Elizabeth would be the sole beneficiary of Plot 1837.

3. Samuel filed an affidavit of protest date 3.12.99 opposing the proposed mode of distribution. He proposed that Plot 1837 be divided amongst all the children of the deceased in equal shares. Also opposed to the distribution was Rahab Mugure Kirui, widow of Peter Kirui, a son of the deceased. In his ruling of 14.7.03, Hon. Waweru, J, made a finding that Elizabeth will inherit Plot 1837 absolutely and ordered that the grant be confirmed in those terms. A certificate of confirmation of grant dated 14.7.03 was accordingly issued. Thereafter Samuel filed an application dated 25.8.05 seeking leave to appeal out of time application was however dismissed on 14.6.06.

4. Thereafter, Dishon and Samuel died on 19.9.14 and 23.2.15 respectively. The record shows that there has been a multiplicity of applications herein all aimed at blocking Elizabeth from enjoying the fruit of the ruling of Hon. Waweru, J. By his Application dated 16.6.15, Dishon's son James Muthiora Muchene, sought the revocation of the grant. He also sought injunctive orders against Elizabeth restraining her from interfering with Dishon's portion of Plot 1837 measuring 0.35ha. In a ruling of 23.1.2020, Hon. Ougo, J dismissed the Application. The learned Judge noted that Hon. Waweru, J had made a determination that Elizabeth was the sole beneficiary of Plot 1837 and she had no jurisdiction to sit on appeal of that order.

5. In her quest to have this matter finally settled and to enjoy the fruit of her judgment, Elizabeth filed her summons dated 2.3.21 seeking the revocation of the Grant. Her grounds are that the Grant has become useless on account of the demise of the Administrators, Dishon and Samuel. She prayed that she be appointed sole administrator of the estate of the deceased. Elizabeth further seeks that the Land Registrar, Nairobi do issue title in respect of Plot 1837 in her name.

6. Elizabeth averred that by a ruling of 14.7.03, Hon. Waweru, J, found her to be the only person entitled to the estate of the deceased. The Administrators who are her brothers died before administering the estate and causing the registration of Plot 1837 in her name. The widows of the 2 administrators file a summons for revocation of grant and of review of the said ruling which was however dismissed by Hon. Ougo, J on 23.1.2020.

7. The Summons is opposed by Jane Wanjiku Muchene (Jane), widow to Dishon by her replying affidavits sworn on 10.5.21 and 19.5.21. Jane averred that Dishon was opposed to Elizabeth being the sole beneficiary of their mother's estate and was determined to ascertain how this had happened. But his efforts were hampered by his limited education and poor representation by his former advocates. He died while still seeking answers. Jane has since established that Elizabeth in cahoots with unscrupulous individuals forged affidavits to convince Hon. Waweru, J. that she was the sole beneficiary of the estate. A forensic examiner found that the affidavit sworn on 13.10.99 by Dishon was in fact signed by a different author. That affidavit had declared Dishon a mere guardian of Plot 1837 and had given the entire property to Elizabeth is what Hon. Waweru, J relied on in his ruling. Jane further stated that Dishon was not called to testify and the consent sated 20.4.99 allegedly signed by all family members is mysteriously missing from the file. Grace Njeri, a daughter of the deceased told Jane that she testified before Ougo, J and stated that the deceased had directed her that Plot 1837 was to be divided into 4 equal portions. Elizabeth cooperated with Dishon and Plot 1837 was registered in both their names.

8. Jane claims that her late husband Dishon is entitled to ¾ of Plot 1837. She wishes to be appointed administrator herein for and on behalf of Dishon’s estate of which she is administrator. According to her, Elizabeth engaged in fraudulent acts of forgery, presented falsified documents and misrepresented facts which occasioned a miscarriage of justice. She urged that the matter be heard afresh in the interests of justice. Jane further sought that she be appointed the administrator of the estate herein pending the hearing and determination of the following issues:

- i. There be a declaration that the ruling of 14.7.03 is irregular and null and void ab initio.
- ii. There be a declaration that there has been a miscarriage of justice on account of fraud and misrepresentation leading to the irregular ruling of 14.7.03.

9. I have considered that application and the rival affidavits sworn by the parties. It is quite evident that Jane seeks to reopen a matter that has been heard and determined by 2 judges of this Court before me. It is trite law that a Court cannot sit on appeal of its own decision, or of that of a Court of concurrent jurisdiction. In the case of *Otieno Oracha v Republic* [2019] eKLR, Aburili, J. stated:

**The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.**

10. Jane ought to have challenged Hon. Waweru’s decision in the Court of Appeal as that is where her recourse lay. From the history of this case, it is quite apparent that what Jane now doing is trying to flog a dead horse. The train left the station the moment Hon. Waweru, J. delivered his ruling on 14.7.03 and no appeal was filed. Further Hon. Ougo, J. placed the last nail on the coffin of this matter when she declined to sit on appeal over Hon. Waweru, J’s decision. I too cannot sit on appeal over a decision of a judge of concurrent jurisdiction.

11. Further, litigation must come to an end. A party in whose favour a decision has been made must be protected from harassment by way of endless litigation. In *Kenya Commercial Bank Limited v Benjoh Amalgamated Limited* [2017] eKLR the Court appeal stated:

**Public interest requires or demands that litigation must at some point come to an end. In the Maina Kiai case (supra), the Court quoted with approval the Indian Supreme Court in the case of *Lal Chand v Radha Kishan*, AIR 1977 SC 789 where it was stated;**

**“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.**

12. In spite of the decision in her favour made on 14.7.03, Elizabeth has not known peace. She has been subjected to multiplicity of proceedings initiated by her brother and his family over her entitlement to her mother’s estate. This must finally be stopped and she must be protected from further harassment.

13. In the end, I do find that the Summons dated 2.3.21 is merited and I make the following orders:

- i. The grant of letters of administration issued to Dishon Muchene Muthiora and Samuel Kahara Gage on 23.3.99 and confirmed on 14.7.03 is hereby revoked.
- ii. Fresh grant of letters of administration of the estate of the deceased is hereby issued to Elizabeth Wanjiku Muthiora *alias* Elizabeth Wanjiku Njuguna.
- iii. The grant of letters of administration is hereby confirmed Elizabeth Wanjiku Muthiora *alias* Elizabeth Wanjiku Njuguna is the sole beneficiary of Title No. Dagoretti/Riruta/1837.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 1<sup>ST</sup> DAY OF OCTOBER 2021**

**M. THANDE**

**JUDGE**

**In the presence of: -**

.....for the Applicant

.....for Respondent

.....**Court Assistant**