

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 585 OF 2016

IN THE MATTER OF THE ESTATE OF IBRAHIM MUCHERU WAHOTHI(DECEASED)

ANN NYATHIRA MUCHERU.....1ST PETITIONER/1ST RESPONDENT

JOHN WARUI JOKIM KAGWATHI.....2ND PETITIONER/2ND RESPONDENT

VERSUS

PETER NJORE WAKABA.....APPLICANT

RULING

1. The deceased Ibrahim Mucheru Wahothi died on 5th September 2013. The respondents Ann Nyathira Mucheru and John Warui Jokim Kagwathi petitioned the court for grant of probate of written Will. They were the executors of the said Will. The grant was issued on 6th June 2016. Pending is an application filed on 8th September 2016 by Obadiah Mburu Mucheru to revoke the grant of probate.
2. The present application dated 28th August 2019 was brought by Peter Njore Wakaba seeking to be enjoined in the cause as an interested party. His case is that he had had a long and unresolved dispute with the deceased over parcel Ndarugu/Gakoe/1021; that this parcel has been listed as part of the estate of the deceased; and he therefore wished to be enjoined to protect his interest in the parcel.
3. The replying affidavits were filed by the 1st petitioner and Samuel Mungai Mucheru (one of the sons of the deceased). They acknowledged the existence of the unresolved suits pending in various courts between the deceased and the applicant over the property, but opposed the application on the basis that the applicant was not a beneficiary of the deceased; that, at best, he was a creditor to the estate.
4. If the applicant is laying a claim over Ndarugu/Gakoe/1021 which has been listed as one of the free properties of the deceased to be distributed to the beneficiaries, it is clear that he will be affected adversely if the distribution proceeds without him being allowed to articulate his claim in the matter (**Communications Commission of Kenya and 4 others –v- Royal Media Services Limited and 7 Others [2014]eKLR**). The applicant may be able to persuade the court that Ndarugu/Gakoe/1021 was not the free property of the deceased under **section 3 of the Law of Succession Act (Cap. 160)**, or that the distribution of the parcel should not happen until his claim to the same has been settled in the pending disputes.
5. I allow the applicant to join these proceedings as an interested party. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 18TH day of FEBRUARY 2020.

A.O. MUCHELULE

JUDGE