



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 807 OF 2007

IN THE MATTER OF THE ESTATE OF GATHONI KARIUKI – (DECEASED)

EVANSON GACHIE KARIUKI 1ST OBJECTOR/APPLICANT

JOSEPH WACHIRA KARIUKI 2ND OBJECTOR/APPLICANT

JOHN KAHORO KARIUKI 3RD OBJECTOR/APPLICANT

RULING

1. The Application coming for consideration in this Ruling is the summons dated 17.7.2018 seeking the following orders:

(i) THAT this Court do issue an Order directing the Registrar Kiambu Land Registry to cancel the current Title Deed in the name of FRANCIS KARIUKI WACHIRA and to issue new Title Deeds as per Certificate of Confirmation issued by M. W. Muigai Judge on 14.3.2018.

(ii) THAT the costs of the Application be borne by the estate of the deceased.

2. The Summons is supported by the Affidavit of the 1st Applicant EVANSON GACHIE KARIUKI sworn on 17/7/2018 in which he has deposed as follows:

(i) THAT the grant of letters of Administration for the Estate of the deceased herein GATHONI KARIUKI (deceased) was issued to EVANSON GACHIE KARIUKI, JOSEPH WACHIRA KARIUKI and JOHN KAHORO KARIUKI ON 14.3.2018.

(ii) THAT upon visiting the Kiambu Land Registry and doing a search, the 1st Applicant discovered that the said property known as DAGORETTI/UTHIRU/91 is registered in the name of FRANCIS KARIUKI WACHIRA.

(iii) THAT the applicant was advised to obtain a Court Order to enable the Land Registrar to cancel the current Title Deed.

3. The Respondent MARGARET WAMWITA KARIUKI filed a Replying Affidavit dated 13th July 2019 filed in Court on 16/7/2019 in which she deposed as follows:

(i) THAT her husband's grandfather had three wives as follows:

a) GATHONI KARIUKI (the Deceased herein and grandmother to FRANCIS WACHIRA.

b) WANJIRU KARIUKI (Evans on Wachira's mother)

c) MURUGI KARIUKI (Mother to the 2nd Applicant – Joseph Wachira)

(ii) That GATHONI KARIUKI had two children WANJIRU MUTAHI and WACHIRA KARIUKI (the father to Francis Wachira who pre-deceased his mother GATHONI KARIUKI.

(iii) THAT upon the demise of GATHONI KARIUKI, FRANCIS WACHIRA obtained Letters of Administration and he inherited the suit property.

4. The Case proceeded by Viva voce evidence. Evanson Gachie Kariuki testified that the Suit Property belonged to his father and that it was divided into three portions according to his three houses and upon the demise of GATHONI KARIUKI(the 1st wife), the family met and agreed that the share for GATHONI KARIUKI should be divided between the 2nd and 3rd houses of WANJIRU KARIUKI and MURUGI KARIUKI respectively.
5. Evanson Gachie Kariuki also said FRANCIS KARIUKI WACHIRA got death Certificate No. 7624017 which was not genuine as the death Certificate which he had No. 624017 is the genuine one.
6. Evanson Gachie Kariuki also said the chief of Kinoo Mr. Kanyonga was the wrong person to issue the chief's letter because he did not know Gathoni and Wanjiru.
7. Evanson Gachie Kariuki also said the father of Francis Kariuki Wachira was called Wachira Njoka.
8. The 2nd and 3rd Applicants also testified and said Francis Kariuki Wachira should not have inherited the suit property.
9. The Respondent MARGARET WAMWITHA KARIUKI said in her testimony that she is the wife of FRANCIS KARIUKI WACHIRA who was a grandson to GATHONI KARIUKI (the deceased).
10. She said she got married to FRANCIS KARIUKI WACHIRA in 1964 and GATHONI KARIUKI died in 1969. She said her husband died in 2015. She said he was the son of Wachira Kariuki who was a son to Gathoni Kariuki (the deceased).
11. The Chief who gave FRANCIS KARIUKI WACHIRA the letter for filing the Petition gave evidence in this case. The chief by name MICHAEL KANYONGA MUKONO who is now retired said he wrote the letter dated 3.3.2006 which was used to petition for grant of letters of Administration by Francis Kariuki Wachira.
12. I have considered the evidence adduced by the parties. I have also perused this case which has a protracted disputed dating back to the year 2007 when this Succession cause was filed by FRANCIS KARIUKI WACHIRA (now deceased) who was the husband to the Respondent MARGARET WAMWITHA KARIUKI.
13. The Deceased herein GATHONI KARIUKI died intestate on 23.1.1969 and on 4.7.2007 FRANCIS WACHIRA KARIUKI (now deceased) was issued with Letters of Administration upon Petitioning the estate of the deceased herein.
14. A perusal of file indicates that FRANCIS WACHIRA listed the beneficiaries of the Estate as follows:
 - (i) FRANCIS KARIUKI WACHIRA
 - (ii) EDWARD GICHURU WACHIRA
 - (iii) LEONARD GACHORO WACHIRA
15. On 26th May 2008, a Certificate of Confirmation was issued to FRANCIS KARIUKI WACHIRA and the suit property was inherited by FRANCIS KARIUKI WACHIRA absolutely.
16. The Applicants herein who are in possession of another deed filed a summons for revocation dated 21.7.2008.
17. On 27.6.2017 the Court issued a Certificate for confirmation to the three Applicants and distributed suit property to the three Applicants.
18. On 1.3.2018 the same was rectified.
19. The Applicants subsequently filed this application dated 17.7.2018 seeking to cancel the current title deed which is in the name of FRANCIS KARIUKI WACHIRA and issue new Title Deeds in accordance with the Certificate of Confirmation issued on 14.3.2018.
20. Upon perusing the file, I find that on 26.3.2018 the Court moved suo moto and set aside the grant of 27.6.2017 and all subsequent rectifications.
21. I find that the Applicant's Application dated 17.7.2018 seeking to have the title cancelled cannot be allowed in the circumstances.
22. Upon perusal of the file I find that the Respondent Margaret Wamwitha Kariuki states in her Affidavit that the deceased herein Gathoni Kariuki was a grandmother to her husband Francis Kariuki Wachira (Deceased) who inherited the land.
23. She said Francis Kariuki Wachira (Deceased) is the son of Kariuki Wachira who was a son to Gathoni Kariuki.
24. She also stated that Kariuki Wachira had a sister called Wanjiru Kariuki alias Wanjiru Mutahi alias Virginia Wanjiru Waguna.
25. However, when I peruse the Petition filed herein by her late husband – Francis Kariuki Wachira ,he said he had brothers.

26. I find that this case needs to be investigated to establish the beneficiaries of the estate.

27. I accordingly dismiss the Application dated 17.7.2018 and direct that the hearing of this case proceeds denovo in order for this Court to establish the true beneficiaries of the Estate.

28. Mention on 17.3.2020 for the witnesses to file their statements.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 14TH DAY OF FEBRUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.