



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2867 OF 2013

IN THE MATTER OF THE ESTATE OF MATHEW MBUGUA KARANJA (DECEASED)

SUSAN WANJIRU GITAU1ST ADMINISTRATOR/RESPONDENT

-VERSUS-

GEORGE KAHUTHU KARANJA.....BENEFICIARY/APPLICANT

JUDGMENT

1. The Deceased herein MATHEW MBUGUA KARANJA (Deceased) alias MBUGUA son of KARANJA intestate on 16th October, 1999 while domiciled in Kenya.
2. The grant of Letters of Administration was made to SUSAN WANJIRU GITAU on 9.6.2014 and confirmed on 17.9.2014 and rectified on 16.11.2015. The Certificate of Confirmation was further rectified on 13.3.2017.
3. The Applicant filed a Summons for review and setting aside of the Certificate of Confirmation dated 10.7.2018 and sought an order of inhibition inhibiting all dealings relating to Title Number KIAMBAA/MUCHATHA/T.346 (hereafter referred to as the suit property).
4. The Applicant filed an Affidavit in Support of the Application in which he stated that he is a beneficiary of the suit property which was held by the deceased who was his brother as a trustee.
5. The Administrator of the Estate of the deceased herein SUSAN WANJIRU GITAU filed a Replying Affidavit dated 12.10.2018 in which she stated that the Applicant had tried to defraud the deceased of the Land but the matter was handled administratively and a suit filed by the Applicant being HCCC No. 1066 of 1999 was dismissed.
6. The Parties gave viva voce evidence. The Applicant said the Property as registered in the name of the deceased by their late father and the deceased was holding the same as a trustee.
7. The Applicant produced a document which was written in Kikuyu language and which was translated stating that the deceased had agreed with the Applicant to share the suit property and that the deceased had been refunded Ksh.500 which he had contributed.
8. I find the title deed in respect of the suit property is in the name of the deceased.
9. There is no evidence that the deceased was holding the said property as a trustee or on behalf of himself and the Applicant.
10. The Applicant is not in occupation of the suit property and there is evidence that a suit filed against the deceased in respect to the suit property was dismissed for want of Prosecution.
11. Although the Applicant submitted that the said case was not determined on merit, the fact remains that the alleged trust by the Applicant has not been proved.
12. It is not the duty of this Court to establish the existence of a trust. The Jurisdiction of Family Court is Limited to transmission of the estate to the beneficiaries.

13. They also relied on H.C SUCCESSION CAUSE NO. 864 OF 1996 [2015] eKLR where the Court held it had no jurisdiction to resolve the proprietary interest based on an alleged trust and the appropriate forum was the Land and *Environment Court*. *It was thus held,*

“The mandate of the probate court under the Law of Succession Act is limited. It does not extend to determining issues of ownership of property and declaration of trust. It is not a matter of the probate court being incompetent to deal with such issues but rather that the provisions of the Law of Succession Act and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.”

14. I find that in the current case, the Applicant is not one of the beneficiaries of the Estate. The Applicant suit against the deceased was dismissed in 2015. It is not clear whether the said had already substituted the Defendant with the personal representative of the deceased on whether the suit had abated.

15. I find that the Applicant has failed to prove his case to the required stand and I dismiss the Application dated 10.7.2018.

16. This being a family dispute each party to bear its own costs of the Application.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 7TH DAY OF FEBRUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.