



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

SUCCESSION CAUSE NO. 717 OF 1998 CONSOLIDATED WITH P&A NO. 2747 OF 2004

IN THE MATTER OF THE ESTATE OF MUTURI GATUKU (DECEASED)

KAMAU GATUKU ALIAS PAUL KAMAU.....ADMINISTRATOR

EDITH WANJIKU MUTURI.....ADMINISTRATOR

AND

DAVID MWANGI GACHUNGA.....PROPOSED INTERESTED PARTY

RULING

1. The application before court is dated 11th July, 2018 and seeks mainly one order as the others are spent ; mainly for the applicant David Mwangi Gachunga to be enjoined to the suit.
2. The application is based on grounds that the applicant bought a subdivision of **L.R. No. Loc. 2/Kangari/1154** from the 2nd administrator Edith (Judith) Wanjiku Muturi. As proof, he annexed a sale agreement dated 29th May, 2017 and a title deed in his name dated 4th July, 2017.
3. This land subject matter has a chequered history, which initially pitted the deceased herein Muturi Gatuku, Paul Kamau and the deceased own brother Mwangi Philip Kiguta.
4. Musyoka J rendered a judgment on this matter on 3rd October, 2014 wherein the Judge upheld the orders made on 18th September 2001 in HCSC No. 717 of 1998 distributing the estate of the deceased between Mwangi Philip Kiguta, Paul Kamau Gatuku and Judith Muturi.
5. In line with the above judgment Ougo J in her ruling of 1st July 2016 reiterated that:
 - i. a fresh grant was issued by Musyoka J to Mwangi Philip Kiguta, Paul Kamau Gatuku and Judith Wanjiku Muturi.
 - ii. the suit property was distributed as follows:
 - a. Mwangi Philip Kiguta – 1 acre
 - b. Paul Kamau Gatuku – 1.6 acres
 - c. Judith Wanjiku – 0.7 acres
6. Therefore, pursuant to the judgment and ruling above all made prior to the time the applicant entered into a sale agreement Edith/Judith Wanjiku Muturi, she was only entitled to 0.7 acres of the land subject matter and that is the only portion to her name to deal as she pleases.
7. If Judith (Edith) Muturi sold more than 0.7 acres and subdivided the property; the earlier grant having been revoked, her actions were unlawful and must be all means be framed upon and particularly because she has continuously refused and/or failed to obey court orders.
8. Further it is not lost to court that she fraudulently sold more than she was entitled to in a bid to defeat the ends of justice which must be condemned. At any rate court orders not made in vain.
9. Applicant’s counsel rightly submitted that the Law of Succession Act empowers the court to enjoin every person who is interested in an estate to enable the court ascertain the claim against the estate.

However, the said provision of the law ought to be read with within context. The Applicant's claim is against an administrator; Edith/Judith Muturi who sold him land and not the estate.

10. The said administrator acted fraudulently, obtained money purporting to sale what she did not have and based on a void document the same having been set aside way in 2014.

Joining the Applicant in an already concluding matter is unnecessary and tantamount to being an abuse of court process.

11. Consequently, the application is declined with costs. The applicant be at liberty to sue the party in an appropriate cause.

Dated and Delivered in Nairobi on this 2ND day of JULY, 2020.

ALI-ARONI

JUDGE