



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 113 OF 1995

IN THE MATTER OF THE ESTATE OF ELIUD NGICHE GITHIRE (DECEASED)

RUTH WANJA OTSYULA.....APPLICANT

VERSUS

ARTHUR NDURU GITHIRE.....1ST RESPONDENT

BUXTON FARMERS CO. LTD...2ND RESPONDENT

R U L I N G

1. Having satisfied itself through an affidavit of service dated 16th July, 2020 that a hearing notice in reference to applications dated 23rd April 2015 and 17th January 2020 was served upon **Arthur Nduru Githire** the 1st Respondent and **Buxton Farmers Co. Ltd.** the 2nd Respondent the matter proceeded on 22nd of July 2020 their absence notwithstanding.

2. The application dated 23rd April 2019 seeks for the following orders: -

- **That the respondents do render a true and just account of the proceeds of sale of 185 acres arising from 165 shares held by the 2nd Respondent on account of the deceased.**
- **That the respondents be directed to disburse the entire proceeds of sale to the 11 beneficiaries of the estate to the exclusion of the 1st respondent.**
- **In the alternative and without prejudice to orders 2 and 3 above in the event that the 1st respondent has already received the proceeds of sale of the 185 acres arising from 165 shares held by the 2nd respondent the other beneficiaries be compensated with an alternative property which the 1st respondent is entitled to.**

2. The application is grounded on the decision of this court of the 16th of April, 2014 directing that proceeds of the shares be distributed amongst the 11 beneficiaries to the exclusion of the 1st Respondent, further that out of the proceeds of sale a balance of Kshs.3,135,000/= remains unpaid to the said beneficiaries.

4. In a supporting affidavit the Applicant states that a substantial amount had already been paid to 11 beneficiaries in line with the court order save for the sum of Kshs.3,135,000/=.

5. The court has had the benefit of reading an affidavit of one **Peter Kahia Giathi** a director of 2nd Respondent, dated the 10th of May, 2011 where he indicated the 2nd respondent's willingness to abide by any court order and it must be in line with the commitment that the 11 beneficiaries benefitted from Kshs.8,745,000.

6. One of the Applicant's annexures is a letter dated 24th November, 2014 from Ngata Kamau Advocate for the 2nd Respondent and where it is explained that the proceeds of sale of 185 acres was concluded in April 2011 long before the court order of Kamaru J, and was paid to Arthur Nduru Githire though in the affidavit of Peter Kahia Giathi dated 10th May, 2011 this was not disclosed.

7. The said letter therefore gives an account of how the 2nd Respondent disbursed proceeds the balance of proceeds due to the deceased.

8. Since there is no contention that what remains unpaid to the 11 beneficiaries is Kshs.3,135,000 and which the counsel for 2nd Respondent indicates was paid to the 1st Respondent which the 1st Respondent has not denied, to grant prayer 3 of the application so that the 11 beneficiaries who ought to have benefitted from the sums, illegally paid to the said 1st Respondent being Kshs.3,135,000/- be compensated from any other property of the estate meant to go to the 1st Respondent is a fair request which the court hereby grant.

9. Costs of the application dated 23rd April 2015 be borne by the 1st Respondent.

10. As regards the application dated 17th January, 2020 the same court finds the muddled up. In an attempt to understand the same the court summarises the prayers as being-

- Cancellation of the court order of 7th June 2018 as property L.R. No. 239/7 is not in existence, as same was amalgamated with others to form L.R. No. 24940/34 (Itugi farm)
- Application dated 1st October 2012 be dismissed.
- The court do take action against the Respondent Arthur Nduru Githire who was warned by court on 10th December, 2019 against interfering with property distributed to other beneficiaries.
- The court do issue an eviction order against the Respondent from L.R. No. 24940/34.

11. The application is predicated on grounds that the Respondent has interfered with distribution of the estate, and he has made applications which amount to abuse of the court process.

12. The grant issued to the deceased widow Julia Njoki Ngichu was confirmed on 19th of July, 1995 and rectified on the 22nd of October, 2009.

13. An issue arose earlier regarding the deceased share at Hillcrest farm which the deceased widow was to hold in trust for the beneficiaries. Anomaly if any and/or misconception on the same was made clear in the ruling of Kimaru J referred to herein above of the 16th of April, 2014.

14. It is to be noted that the grant, as rectified remains in force and indeed the administrators ought by now to have distributed the entire estate to the beneficiaries in line with the said grant.

15. From the pleadings in court it appears that North East Limuru L.R. No. 239/2/3/1, 143/6 and 239/4 were amalgamated to form L.R. No. 24940 (Itugi farm) which property was distributed to 12 persons including the widow and the acreage stipulated so that each beneficiary should only occupy their portions and no more.

16. In his application dated 7th June 2018 the 1st Respondent made reference to a non-existing L.R. No. being L.R. No. 239/7 Limuru Township. He obtained an order requiring status quo on L.R. No. 239/7 be maintained. It is clear to me that the Respondent misled the court as no such property as 239/7 does exist. The Respondent is only entitled to 14.8 acres of the amalgamated property now known as L.R. No. 24940. The order issued based on wrong information is therefore vacated.

17. As regards the application dated 1st October 2012 and the order issued therein, the subject of the application was Julia Njoki Githire who since died. Any order thereof abated, the application is of no consequence and marked dismissed.

18. It appears that part of the estate herein has remained undistributed for the last 25 years and this certainly informs the dispute between and/or among the beneficiaries. The administrators have failed on their part to take up their duties under the law seriously and the court therefore shies away from punishing any one as a result of the failure.

19. And in order to bring an end to this matter the administrators are hereby directed to put in place mechanisms to divide the remainder of the estate and distribute to the respective beneficiaries in line with the schedule of distribution within the next 60 days of the date hereof.

20. The distribution referred to in paragraph 19 should take into account the holding of the court on prayer No. 8 above.

21. All beneficiaries are directed to cooperate with the Administrators to enable them conclude the exercise of distributing the estate. Further each beneficiary do take possession of what is rightfully theirs.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF OCTOBER, 2020.

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ALI-ARONI

JUDGE