



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 673 OF 1990
IN THE MATTER OF THE ESTATE OF HARRY GITAU RICHU - (DECEASED)

GEOFFREY RICHU.....APPLICANT

VERSUS

SAMUEL KINYANJUI.....1ST RESPONDENT

EDWARD NDUNGU.....2ND RESPONDENT

PETER KIAMBUTHI.....3RD RESPONDENT

RULING

1. This matter concerns the estate of the deceased Joseph Gitau Richo who died intestate on 20th December 1985 and whose estate comprised land parcels Dagoretti/Kinoo/600, 634, T.408 and T.403. The deceased was survived by a widow, four sons and 6 daughters. A grant of letters of administration intestate was issued to one of the sons Geoffrey Richu (the applicant) on 7th August 1990 and confirmed on 15th November 1991. The deceased's other sons are the respondents Samuel Kinyanjui, Edward Ndungu and Peter Kiambuthi.

2. Dagoretti/Kinoo/600 was ordered to be shared equally among the four sons of the deceased, Dagoretti/Kinoo/634 was to be shared equally among the five daughters and the widow Penina Kanini Gitau, Dagoretti/Kinoo/T.403 went to a daughter Rachel Njeri and Dagoretti/Kinoo/T.408 and was to be registered in the joint names of the sons.

3. On 2nd June 2017 the respondents filed an application dated the same day to complain, among other things, that the applicant had unilaterally subdivided Dagoretti/Kinoo/600 into ten parcels (6571, 6572, 6573, 6574, 6575, 6576, 6577, 6578, 6578, 6579, 6580) and obtained title deeds for the parcels thereby causing the closure of the mother title. The following prayers were sought.

“1. THAT the instant application be certified as urgent and the same be heard *ex parte* in the first instance.

2. THAT pending the hearing and determination of this application the Honourable Court be pleased to grant an order of inhibition, inhibiting the transfer, charge encumbrances and/or any other dealings whatsoever in respect of Dagoretti/Kinoo 6571, 6572, 6573, 6574, 6575, 6576, 6577, 6578, 6578, 6579 and 6580 respectively.

3. THAT this court be pleased to make a declaration that the mutation and subsequent sub-division of Dagoretti/Kinoo 600 without the applicant's consent to Dagoretti/Kinoo 6571, 6572, 6573, 6574, 6575, 6576, 6577, 6578, 6578, 6579 and 6580 is null and void.

4. THAT this Honourable Court be pleased to rescind, recall, vary and/or annul the mutation, sub-division. Transfer and any registration of Dagoretti/Kinoo/600.

5. THAT this Honourable Court be pleased to grant an order directing rectification of the register in respect of the ten

mutations and sub-divisions namely Dagoretti/Kinoo 6571, 6572, 6573, 6574, 6575, 6576, 6577, 6578, 6579 and 6580 and restoring the same to Dagoretti/Kinoo 600 as wholly and solely owned by the deceased Joseph Gitau Richo pending the Consent or order for distribution of the estate.

6. THAT this Honourable Court be pleased to make such other and/or further orders as may be just and expedient in the circumstances.

7. THAT cost of this application be provided for.”

4. On 10th October 2017 the Court (Justice M.W. Muigai) granted prayers 2 and 3 above on interim basis, and asked that a date be taken in the registry for *interparte* hearing. The orders were granted in the presence of the respondent and their counsel.

5. The present application by the applicant is dated 17th August 2020 and seeks the stay of the orders of 10th October 2017 and for the orders to be set aside together with the proceedings leading to the orders and any other consequential orders. He asked that it be found that the proceedings and orders of 10th October 2017 were null and void, and that he be given leave to respond to the application dated 2nd June 2017. The reasons given for the application were that the applicant was not served with the application dated 2nd June 2017, he therefore did not defend it and was not aware that it was coming for hearing. Since the *exparte* orders, he stated, the matter has not been served on him for *interparte* hearing.

6. The respondents were served with the present application but did not file a response.

7. I have perused this file. On 28th July 2017 Kimani Kahete & Co. Advocates were appointed by the applicant to come on record for him. On 14th September 2017 the advocates filed a replying affidavit sworn by the applicant in response to the respondents' application dated 2nd June 2017. On 18th September 2017 counsel for the respondents and counsel for the applicant appeared before Justice Muigai on the application dated 2nd June 2017. The matter was adjourned to 10th October 2017 at 2.00pm. Come 2.30 pm on 10th October 2017, only the respondents and their advocates were present. The orders in question were granted.

8. It is therefore not true that the application dated 2nd June 2017 was not served on the applicant. It is not true that he did not respond to it. It is not true that he was not aware of the hearing date. Lastly, the court indicated that the orders were granted on 10th October 2017 were interim and that the parties should take a date at the registry for *interparte* hearing of the application. That has not been done. The application is therefore still live.

9. The result is that there is no merit in the application by the applicant. The same is dismissed.

10. Since the application was not defended, I will not award costs.

DATED and DELIVERED at NAIROBI this 2ND DECEMBER 2020.

A.O. MUCHELULE

JUDGE