



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 278 OF 1998

IN THE MATTER OF THE ESTATE OF PETER MBURA KAMURWA (DECEASED)

GRACE WANJIRU MBURA.....1ST OBJECTOR

MARY MWERU MBURU.....2ND OBJECTOR

VERSUS

ROSE WANJIKU MBURA.....1ST ADMINISTRATOR

JOHN KAMURWA MBURA.....2ND ADMINISTRATOR

JUDGMENT

1. The deceased herein died on the 7th of October 1996 and his wife, Rose Wanjiku Mbura and son John Kamurwa Mbura petitioned for grant of probate and a grant issued on the 8th of April 1998.

2. On the 17th of May 2007 the two administrators applied to have the grant confirmed. Two other sons of the deceased; Peter Nganga and Joseph Mwangi consented to the confirmation of the said grant.

3. In the affidavit in support of confirmation the administrators proposed to share the only asset Dagoretti/Riruta/2386 measuring 0.405 Ha as follows:

Rose Wanjiku – 0.119 Ha.

P.C.E.A – 0.15 Ha.

James K. Muiruri – 0.136 Ha.

4. Annexed to the said application was an affidavit sworn by Wilson Kiboi the Secretary of the Presbyterian Foundation confirming that it owns 38% of the said land. Also annexed were documents in support of the proposed distribution to James Kabiri Muiruri, i.e.

- Application for consent of the Land Control Board dated 2nd December 1992 for purchased of 0.10 Ha. of L.R. No. Dagoretti/Riruta/2386 at a sum of Kshs.135,000.

- Sale agreement dated 31/10/1991 for a portion measuring 66x130ft

- Acknowledgment not of Kshs 95,000/-

- An agreement dated 3rd may 1995 for purchase of a portion measuring 70x50 ft for Kshs 130,000

- Consent of Land Control Board dated 2nd December 1992.

5. The said application attracted affidavits of protest. Grace Wanjiru Mbura (1st Protestor) filed a protest dated 12th August 2013 stating that she was a daughter of the deceased. She gave seven names of the deceased children as opposed to 4 that were given by the administrator. The affidavit gave the following names of the deceased children:

a. John Kamura (2nd administrator)

b. Peter Nganga

c. Joseph Mwangi

d. Samuel Thiongo

e. Paul Mburu

f. Virginia Waithera

g. Cidy Waithera

6. The 1st protestor also claimed that some of the agreements in support of the proposed distribution of the estate were false, that a part from the Presbyterian Churches' share the rest of the property should be registered in the name of the mother in trust for the deceased children.

7. James Kabiri Muiruri (2nd Protestor) died on the 3rd of May, 2013 and his widow Mary Mweru Mburu was appointed as an administrator of her husband's estate and on 15th November, 2018 she filed an affidavit of Protest in this matter.

8. It is her case that her late husband James Kabiri Muiruri bought two portions of L.R. No. Dagoretti/Riruta/2385 from the deceased namely:

- 66ft x 130 ft (0.10 Ha.) on 31/10/1991.

- 70ft x 50ft on 3/5/1995

In support of her claim she annexed documents similar to the ones filed by the administrators including additional acknowledgement of sums paid.

9. It was her claim that the deceased died before obtaining a consent for the 2nd portion. Further that she has been in possession of her two portions which she has extensively developed.

10. Among her documents she annexed a letter by Rose Wanjiku dated 29th May 2002 addressed to the Land Registrar confirming sale of Land to the 2nd Protestor's husband.

11. The widow/co administrator Rose Wanjiru Mburu filed a supplementary affidavit dated 19th April 2018 which was mainly an admission that she had left out names of some of her children and recanting and disowning documents that supported distribution of the estate of James Kabiri Muiruri.

12. The court directed that a survey on the ground be carried out and the survey reported that Mary Mweru Mburu occupies 0.113 Ha.

13. The 2 Protestors and the 1st administrator gave evidence and had submissions filed on their behalf.

Having considered the same, the issues before court are:

a. Whether the deceased sold his portion of Dagoretti/Riruta/2386 to the husband of Mary Mweru Mburu and

b. If so, what is the size?

14. I must say from the onset that the administrator, 1st and 2nd Protestors have used similar documents in support of their

case. And it is not in dispute that title **L.R. Dagoretti/Riruta/2386** is in the names of Presbyterian Foundation at 38/100 shares and Peter Mbura Kamurwa 61/100 shares.

15. The Administrators in their application for confirmation stated that the deceased did sell 0.136 Ha. of land to the 2nd Protestor's husband. However after the affidavit of protest by her daughter, the 1st administrator Rose Wanjiku Mbura seemed to have a change of heart. The 1st administrator contends that her father sold a smaller portion and further that the land is too small and should remain within the family.

16. I find having considered the evidence on record and the surrounding circumstances that Mary Mweru Mburu has proved on a balance of probabilities that her husband did indeed purchased 0.136 Ha. of Dagoretti/Riruta/2386 from the deceased and that indeed she occupies and has extensively developed 0.113 of the same.

17. Consequently the grant will be confirmed based on paragraph 5 of the supporting affidavit of the application dated 17th May, 2007.

18. Costs to the 2nd Protestor Grace Wanjiru Mbura.

DATED, SIGNED and DELIVERED at NAIROBI this 16TH DAY OF MAY, 2019.

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ALI-ARONI

JUDGE