



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 293 OF 2002**

**IN THE MATTER OF THE ESTATE OF SAMUEL NDEGWA KAGONDU (DECEASED)**

MARY WAIRIMU NDEGWA.....1<sup>ST</sup> APPLICANT

STEPHEN NJOROGE KAMAU.....2<sup>ND</sup> APPLICANT

PHYLIS GLORIA WANJIRU KAMAU.....3<sup>RD</sup> APPLICANT

**VERSUS**

**ANTHONY KAGONDU NDEGWA**

**LILLIAN WANGARI NDEGWA**

**JAIRUS KAGONDU NDEGWA**

**KEVIN MUIRURI NDEGWA**

**RUTH WAMAITHA NDEGWA**

**DAMARIS WANJA NDEGWA.....RESPONDENTS**

**RULING**

1. By an application filed by way of summons dated 11<sup>th</sup> June, 2018 the Applicants are seeking orders that:

1. ...

2. Anthony Kagondú Ndegwa, Lillian Wangari Ndegwa, Jairus Kagondú Ndegwa and Kevin Muiruri Ndegwa (*as Trustees of the Beneficiaries*) and Ruth Wamaitha Ndegwa, Damaris Wanja Ndegwa and Lillian Wangari Ndegwa (having been registered as owners of Title Number Eldoret Municipality Block 21/king'ong'o/5360) together with their agents or any other person claiming under them be restrained from transferring, charging, leasing or in any manner whatsoever interfering with Title Number Eldoret Municipality Block 21/king'ong'o/5360 and Title Number Eldoret Municipality Block 5/158 (West Indies) pending the hearing and determination of the application herein.

3. The title number Eldoret Municipality Block 21/king'ong'o/5360, which is due to Rahab Muringi Kamau (deceased) being her share/ entitlement as a beneficiary of the estate of the deceased herein, be relinquished and transferred by Ruth Wamaitha Ndegwa, Damaris Wanja Ndegwa and Lillian Wangari Ndegwa to Stephen Njoroge Kamau and Phylis Gloria Wanjiru Kamau as entitled in law, them being the children of Rahab Muringi Kamau (deceased) and the Administrators of her estate.

4. A fair portion of Title Number Eldoret Municipality Block 5/158 (West Indies) due to Rahab Muringi Kamau (deceased) as a beneficiary of the estate of the deceased herein be relinquished and transferred by Anthony Kagondú Ndegwa, Lillian Wangari Ndegwa, Jairus Kagondú Ndegwa and Kevin Muiruri Ndegwa (being the trustees of the beneficiaries) to Stephen Njoroge Kamau and Phylis Gloria Waniru Kamau as entitled in law, them being the children of Rahab Muringi Kamau (deceased) and the Administrators of her estate.

5. The cost of this application be provided for.

2. The summons is supported by an affidavit sworn by Mary Wairimu Ndegwa, the 1<sup>st</sup> Applicant, on 11<sup>th</sup> June, 2018 with the consent of her co-applicants in which she deposes that she is the Administrator of the estate of the deceased herein as demonstrated by the certificate of confirmation of grant dated 5<sup>th</sup> November, 2013. Her co-applicants are the children of one of the beneficiaries, the late Rahab Muringi Kamau who was a daughter to the deceased and who died on 5<sup>th</sup> May, 2013 as shown on the Certificate of Death No. 250822 annexed to the affidavit

3. Mary contended that prior to executing the transfers of the assigned shares of the deceased's intestate estate to her children, who are the beneficiaries of the deceased herein, it was agreed amongst themselves that the share of Rahab Muringi Kamau (deceased) would go to her two children namely Stephen Njoroge Kamau and Phylis Gloria Wanjiru Kamau, who are also the co-administrators of her intestate estate.

4. In June 2017, Mary received complaints from Stephen and Phylis that the other beneficiaries had refused to give them any information as to how the property was being shared. Mary was summoned to appear before the Area Chief Kapyemit location, Eldoret on 14<sup>th</sup> June, 2017 in her capacity as Administrator of the estate of deceased herein to explain the position. Mary averred that she appeared before the Area Chief on 15<sup>th</sup> June, 2017 during which time one Kevin Muiruri Ndegwa informed the Chief that there was never an intention to allocate the late Rahab Muringi Kamau's share of the deceased's estate to her children. According to Kevin, Rahab's share was to devolve to the deceased's daughters namely Ruth Wamaitha Ndegwa, Damaris Wanja Ndegwa and Lilian Wangari Ndegwa.

5. Mary accused Kevin of threatening her co-applicants and occasioning Stephen Njoroge Ndegwa injuries which were classified as harm in the P3 form dated 15<sup>th</sup> June, 2016 filed by the Medical Officer who examined Stephen at the Huruma Sub-county Hospital.

6. Upon the advice of the Area Chief, Mary applied to the Land's office to lodge a Caution against Title Numbers Eldoret Municipality Block 21/king'ong'o/5354 and Eldoret Municipality Block 21/king'ong'o/5355. She successfully lodged a Caution on the property known as Eldoret Municipality Block 21/King'ong'o/5355 on 12<sup>th</sup> June, 2017. The two titles were the resultant titles following the amalgamation of Eldoret Municipality Block 21/king'ong'o/2187, 2186, 2740, 2741 and 2255 which are named in the Certificate of Confirmation of grant.

7. Despite the caution so lodged, the beneficiaries subdivided the land into Title numbers Eldoret Municipality Block 21/King'ong'o/5356-5363 and shared the resultant titles amongst themselves being Anthony Kagondu, Lilian Wangari Ndegwa, Kevin Muiruri, Ruth Wamaitha Ndegwa, Damaris Wanja Ndegwa, Jairus Kagondu Ndegwa, Mercy Muringi Ndegwa and Elijah Ngugi Ndegwa. Mary urged that as such, Stephen Njoroge Kamau and Phylis Gloria Wanjiru Kamau risk being dispossessed of their entitlement in law as the children and dependants of the late Rahab Muringi Kamau.

8. On 12<sup>th</sup> June, 2018 Lady Justice M. Muigai directed that the application be served upon the Respondents who were to file a replying affidavit in response thereof. The learned Judge also granted an order restraining the Respondents, their agents and any other persons claiming under them from transferring, charging, leasing or in any manner whatsoever interfering with the properties of Title number Eldoret Municipality Block 21/King'ong'o/5360 and Eldoret Municipality Block 5/158 (West Indies) pending the hearing and determination of the application.

9. Despite being served as evidenced by the affidavits of service on record, the Respondents failed to file a response to the application. The application therefore proceeded for hearing on 11<sup>th</sup> December, 2018 in the absence of the Respondents.

10. Learned counsel Mr. Isindu submitted on behalf of the Applicants that the Certificate of Confirmation of Grant issued in relation to the deceased's estate, which is annexed to the affidavit sworn in support of the application shows Rahab Muringi Kamau as a beneficiary of the deceased's estate. Rahab died on 5<sup>th</sup> May, 2013 while the matter was pending in court and was survived by two (2) children: Stephen Njoroge Kamau and Phylis Gloria Wanjiru Kamau, who are the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant respectively. The grant was confirmed on 5<sup>th</sup> November, 2013, six (6) months after Rahab's death.

11. Mr. Isindu contended that the property of the deceased Rahab Muringi was to go to her children who are the administrators of her intestate estate. Instead, the Trustees transferred Rahab's share of the deceased's estate in the properties known as Eldoret Municipality Block 21/King'ong'o/ 5360 and Eldoret Municipality/Block 5/158 (West Indies) to themselves contrary to the terms of the Certificate of Confirmation of Grant. The properties were consequently amalgamated and new titles obtained. Counsel asserted that the persons in whose names the properties were registered have been very hostile yet the understanding was that the share of Rahab Muringi would go to her children who are the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants herein. Counsel urged the court to grant an order that the share due to Rahab Kamau be transferred directly to the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant.

12. The deceased whose estate is in issue herein died intestate on 22<sup>nd</sup> July, 2000. A grant of letters of administration intestate was made to his wife Mary Wairimu Ndegwa, the 1<sup>st</sup> Applicant herein on 26<sup>th</sup> March, 2003 and confirmed on 5<sup>th</sup> November, 2013.

13. According to the Certificate of Confirmation of Grant dated 5<sup>th</sup> November, 2013 and signed by Kimaru J, the properties known as Eldoret Municipality Block 21/King'ong'o/2187, 2186, 2740, 2741 and 2255 and Eldoret Municipality Block 5/158 West Indies were to be registered in the names of Anthony Kagondu, Lillian Wangari, Jairus Kagondu and Kevin Muiruri to hold in trust for:

- (a) Rahab Muringi Kamau
- (b) Anthony Kagondu Ndegwa
- (c) Ruth Wamaitha Ndegwa

- (d) Kevin Muiruri Ndegwa
- (e) Damaris Wanja Ndegwa
- (f) Lilian Wangari Ndegwa
- (g) Jairus Kagonda Ndegwa
- (h) Elijah Ngugi Ndegwa
- (i) Mercy Muringi Ndegwa

14. Though Stephen Njoroge Kamau and Phylis Gloria Wanjiru Kamau, the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant respectively, are grandchildren of the deceased herein, they are entitled in law to inherit through their mother Rahab Muringi Kamau (deceased). The question of whether grandchildren can inherit from their grandfather's estate was addressed in the case of **Cleopa Amutala Namayi vs. Judith Were Succession Cause 457 of 2005 [2015] eKLR** in the High Court at Kakamega where Mrima J observed thus:

**“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic) who died intestate after 01/07/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents.”**

15. In the present case, Rahab Muringi Kamau, a daughter to the deceased herein died before the grant in respect of her deceased father's estate could be confirmed and the estate consequently distributed. Annexed to the application is a limited grant of letters of administration *ad litem* made to both Stephen and Phylis with respect to the estate of Rahab Muringi on 28<sup>th</sup> March, 2018 by Musyoka J in Succession Cause No. 350 of 2018 in the High Court at Nairobi. They therefore hold the appropriate representation and have the *locus* to bring the present suit.

16. Both Stephen and Phylis are not claiming directly out of the deceased's intestate estate, but are merely seeking the share which their mother Rahab Muringi (deceased) ought to have inherited from the deceased's net intestate estate. As children of Rahab Muringi, the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant are entitled to inherit out of her estate which comprises her share of the estate of the deceased herein. This is in line with the certificate of confirmation of grant which lists Rahab Muringi as a beneficiary who was entitled to share in the properties listed as Eldoret Municipality Block 21/King'ong'o/2187, 2186, 2740, 2741 and 2255 which were amalgamated into two: Eldoret Municipality Block 21/King'ong'o/5354 and Eldoret Municipality Block 21/King'ong'o/5355 and the property known as Eldoret Municipality Block 5/158 (West Indies).

17. The 2<sup>nd</sup> and 3<sup>rd</sup> Applicant are children of the late Rahab Muringi and there is no indication that the late Rahab was survived by a spouse. As children of Rahab therefore, the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant are entitled to inherit from Rahab's estate by virtue of **section 38** of the **Law of Succession Act**. I note that the share of the deceased's estate due to Rahab Muringi comprises her net intestate estate.

18. In the premise therefore, I find that the application filed by way of summons dated 11<sup>th</sup> June, 2018 is meritorious. I consequently allow it in terms of prayers 3 and 4. It is so ordered.

**SIGNED DATED and DELIVERED** in open court this **13<sup>th</sup> day of May, 2019.**

**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of .....Advocate for the Applicants.**

**In the presence of .....Advocate for the Respondents.**