



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2424 OF 1994
IN THE MATTER OF THE ESTATE OF LUCY WANJIRU CURURU (DECEASED)

DAVID WANGUNYU CURURU.....APPLICANT

VERSUS

CHRISTINE WANJIKU.....1ST RESPONDENT

FRANCIS KINYANJUI KABUL.....2ND RESPONDENT

PATRICK KURIA NDUATI.....3RD RESPONDENT

JOHN NDUNGU NDUTA.....4TH RESPONDENT

RULING

1. The deceased Lucy Wanjiru Cururu died interested on 22nd December 1990. He was survived by the following children:-

- (a) the late John Ndungu Cururu;
- (b) the applicant David Wangunyu Cururu;
- (c) the late Godfrey Nduati Cururu;
- (d) the late Mary Nduta Cururu; and
- (e) the late Virginia Wahito Kabue.

2. The late John Ndungu Cururu had 11 children who included the 1st respondent Christine Wanjiku. The late Godfrey Nduati Cururu had two children who are the 2nd and 3rd respondents. The late Mary Nduta Cururu had three children who included the 4th respondent. The late Virginia Wahito Kabue had seven children.

3. The deceased's estate comprised LR No. Dagoretti/Riruta/351, LR No. Dagoretti/Riruta/T.148 and Kshs.5,000/= in her account No. 130374031 at Kenya Commercial Bank, Moi Avenue in Nairobi.

4. The applicant on 29th November 1994 petitioned the court for the grant of letters of administration. The petition was consented to by the late John Ndungu, the late Godfrey Nduati Cururu, Patrick Kuria and the late Virginia Wahito Kabue. The grant was issued on 7th February 1995. The same was confirmed on 6th October 1995. The land parcel Dagoretti/Riruta/351 was to be shared as follows:-

- (a) the late Mary Nduta Cururu 0.20 acres;
- (b) the late Virginia Wahito Kabue 0.20 acres;

- (c) the applicant 0.9 acres;
- (d) the late John Ndungu Cururu 0.3 acres;
- (e) the late Godfrey Nduati Cururu 0.12 acres;
- (f) Stephen Kariuki Gachuru 0.10 acres;
- (g) Njeri Wanjiru 0.10 acres;
- (h) Wanjiku Wanjuhi 0.12 acres, and
- (i) Ragae Kamau 0.12 acres

The applicant got the Dagoretti/Riruta/T.148 plot and the money in the bank.

5. Some of the people who got land from the distribution had bought the same from the beneficiaries.

6. On 7th October 2015 the certificate of confirmation was rectified at the instance of the applicant who had requested that Dagoretti/Riruta/351 be substituted with Dagoretti/Riruta/3893. The new parcel was shared as follows:-

- (a) the applicant got 0.90 acres and was to hold 0.20 acres in trust for the children of Mary Nduata Cururu and 0.20 acres in trust for the children of Virginia Wahito Kabue;
- (b) Esther Njeri Ragae was to get 0.12 acres;
- (c) Njeri Wanjiru was to get 0.12 acres;
- (d) Stephen Karuki Wachuru was to get 0.12 acres;
- (e) the late Godfrey Nduati Cururu was to get 0.12 acres; and
- (f) Wairimu Ndungu was to get 0.3 acres.

7. Dagoretti/Riruta 351 had divided into 3892 and 3893. 3892 had gone to a purchaser Wanjiku Wanjui.

8. There was a further rectification at the instance of the applicant on 23rd January 2016 that included parcel Dagoretti/Riruta/148 in the estate of the deceased. The parcel was to be shared equally among the beneficiaries.

9. This ruling is in respect of two applications. The first one is the one dated 24th November 2017 by the applicant. He sought the review of the orders made on 23rd January 2016 so that the land parcel Dagoretti/Riruta/148 be allocated to him alone. The rectification had ordered that the parcel be shared equally to all the beneficiaries. His case was that this parcel, although registered in the name of the deceased, was his; that he had bought it during his youth and got it transferred to his mother (the deceased). He then went to the USA for further studies. When he returned, he settled on it. The rest of the beneficiaries have no claim to it, he said. The deceased consequently held the parcel in trust for him. He was supported in the application by Nelly Waithera Kingihia who is married to the deceased's brother.

10. The respondents opposed the application. Their case was that the applicant had already inherited a bigger portion of land Dagoretti/Riruta/2893, and could not alone get Dagoretti/Riruta/148.

11. The second application was by the respondents. It was dated 13th February 2018 and sought the review of the confirmation issued on 6th October 1995 and rectified on 7th October 2013 and further rectified on 23rd February 2016. Their complaint was that their late parents had been allocated 0.20 acres, 0.20 acres, 0.30 acres and 0.12 acres, respectively, of Dagoretti/Riruta/3893 when the applicant had allocated himself a bigger portion of 0.90 acres. Their case was that each child of the deceased was entitled to an equal share of the estate. They stated that when the confirmation was done most of them were minors and were not aware of what was happening. When the rectification was done, they stated, all the beneficiaries were not consulted.

12. The applicant's response was that, both land parcels Dagoretti/Riruta/351 and Daogretti/Riruta 148 were, infact, bought by him in 1957 and he got them registered in the name of his mother (the deceased) because he was then studying abroad. When he returned he shared some of the parcels to his siblings and some sold their shares to third parties (Stephen Kariuki Gichuru, Ragae Kamau and Ndungu Curu). He stated that his siblings were in court at confirmation and during rectifications and provided their consents.

13. Mr. Mbigi represented the applicant and Mr. Mongeri represented the respondents. They each filed written submissions which I have considered.

14. Land parcels Dagoretti/Riruta/351 and Dagoretti/Riruta/148 were registered in the name of the deceased. The applicant claims that she was so registered to hold in trust for him; that he is the one who had bought them in 1957. If the basis of his claim to the whole of parcel

Dagoretti/Riruta/148 is this trust, then he needed to bring a suit against the estate of the deceased for the declaration of that trust and the determination of the same. Such a suit would have to be brought in the Environment and Land Court created under **Article 162(2)** of the **Constitution** and **section 13** of the **Environment and Land Court Act, No. 19 of 2011 (In the Matter of the Estate of Peter Igamba Njoroge, Nakuru High Court Succession Cause No. 432 of 2009)**. This succession court can only deal with the ascertainment of the estate of the deceased, the identification of the deceased's beneficiaries and dependants and the distribution of the estate to them in accordance with the **Law of Succession Act (Cap 160)**. Where a party claims that the land registered in the deceased's name did not, in fact, belong to the deceased but belonged to him, the succession court would not have jurisdiction to deal with the dispute. This would be a dispute regarding title to land that has to be heard and determined by the Environment and Land Court. It follows that the applicant cannot, through an application for review in this succession cause, seek to challenge the title that the deceased had in Dagoretti/Riruta/148. His application dated 24th November 2017 must therefore fail.

15. Regarding the respondents application dated 13th February 2018 for review, it is trite that such application has to be brought without unreasonable delay. If the respondents were minors in 1995 when confirmation was done, there is no explanation why their parents did not seek the review of confirmation soon thereafter. If they complain about the rectification of 7th October 20143 and 23rd February 2016, then it has taken them about 5 years and 2 years, respectively, to seek review. They have not offered any explanation for the delay in bringing the application. In **Kenfreight E.A. Ltd –v- Star E.A. Co. Ltd [2002] 2KLR 783**, the Court found that a delay of three months was unreasonable. In **Abdulharman Hassan –v- National Bank of Kenya, HCCC No. 446 of 2001 at Kisumu**, the court found that the unexplained delay of three months was unreasonable delay. In **John Agina –v- Abdulswamad Sharif Alwi, Civil Appeal No. 83 of 1992**, the Court of Appeal found that the unexplained delay of two years was unreasonable. I find that the respondents' application for review was brought late. There was unreasonable explanation for the delay.

16. But the more fundamental issue is that an application for review should be brought where there is claim that there has been the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time the decree or order was made; or there has been some mistake or error apparent on the face of the court; or there is some other sufficient reason why review should be granted. In this case the respondents are challenging the distribution of the estate of the deceased, and are saying that the reason why the distribution went the way it did was because they were not informed of the distribution to be able to attend the court, and that their consent was not sought. Their grievance, I find, does not fall under **Order 45** of the **Civil Procedure Rules**. They ought to have sought the revocation of the grant and the setting aside of the certificate of confirmation under **section 76** of the **Law of Succession Act**. They are, therefore, not competently before this court.

17. In conclusion, I dismiss the application by the applicant dated 24th November 2017 and the respondents' application dated 13th February 2018.

18. This is a family dispute. Each side shall bear own costs.

DATED and DELIVERED at NAIROBI this 17th day of JULY, 2019.

A.O. MUCHELULE

JUDGE