



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2927 OF 1999
IN THE MATTER OF THE ESTATE OF JONATHAN MBATIA KIEYA - (DECEASED)

PETER KABUI MBATIA.....1ST APPLICANT

ANASTASIA WANJIKU KABUI.....2ND APPLICANT

VERSUS

ELIZABETH NJERI MBATIA.....1ST RESPONDENT

SIMON THAIRU MBATIA.....2ND RESPONDENT

RULING

1. It is not in dispute that the deceased Jonathan Mbatia Kieya died intestate on 6th May 1999 at Nairobi. He left a piece of land registration number Dagoretti/Riruta/4654. He was survived by a widow Elizabeth Njeri Mbatia (1st respondent) and the following children: Margaret Wanjiku Kungu, Peter Kabui Mbatia (1st applicant), John Kariuki Mbatia, Gladys Njeri Mbatia, Simon Thairu Mbatia, Jennifer Wambugu Mbatia, Jane Wanjiku Mbatia and Naomi Wambui Mbatia. The 1st respondent was on 11th April 2000 granted letters of administration intestate. The letters were confirmed on 10th May 2000. She was ordered to be registered in respect of the parcel “and later to all the beneficiaries”.

2. On 3rd October 2016 the 1st applicant sought to have the grant revoked, and the cancellation of the titles following 1st respondent’s subdivision of the parcel of land. She had divided the parcel into Dagoretti/Riruta/6339, 6340, 6341, 6342 and 6343 without reference to the 1st applicant and without providing for him. He had for the last 28 years been living on what was now Dagoretti/Riruta/6340 but the 1st respondent had registered it in her name. She had registered another parcel, Dagoretti/Riruta/ 6342 in her name and, in answer to the application or revocation, had admitted that she had kept it for the 1st applicant. On 17th May 2017 the court ordered that the parties do agree on fresh distribution taking into consideration the interest of the 1st applicant. If the parties failed to agree each side was asked to propose the mode of distribution.

3. The 1st respondent together with five other beneficiaries (Margaret Wanjiku Kungu, Gladys Njeru Mbatia, Jane Wanjiku Mbatia, Naomi Wambui Mbatia and Simon Thairu Mbatia) agreed to have the

estate shared as follows:-

- (a) Gladys Njeri Mbatia – 6343;
- (b) 1st applicant – 6342;
- (c) 1st respondent and John Henis Kariuki Mbatia – 6341;
- (d) 1st respondent, Margaret Wanjiku Kungu, Jeniffer Wambugu Mbatia and Jane Wanjiku Mbatia – 6340; and
- (e) 2nd respondent – 6339.

4. On his part, the 1st applicant asked that the deceased's parcel be shared into 5 equal portions. He attached a sketch map as follows:-

- (a) Portion A – 2nd respondent;
- (b) Portion B – 1st applicant;
- (c) Portion C – John Kariuki Mbatia;
- (d) Portion D – Gladys Njeri Mbatia; and
- (e) Portion E – to be equally shared between – Jane Wanjiku Mbatia and Jennifer Wambugu Mbatia.

His allocation was meant to ensure that each beneficiary was put where he presently resides.

5. Under **section 35** of the **Law of Succession Act (Cap.160)**, the deceased left a widow, five daughters and three sons, and therefore the widow should get personal and household effects and life interest in the parcel; and the children should equally share the parcel. **Article 27** of the Constitution of Kenya 2010 prohibits discrimination of any person on any ground, including race, sex, pregnancy, mental status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. The **Act** does not discriminate between the male and female children of the deceased, whether those children are married or not (**Naomi Wangechi Munene –v- Joseph Ndiritu Gitonga, H.C. Succession Cause No. 374 of 2011 at Nyeri**).

6. I consider that when the 1st applicant objected to the earlier distribution of the 1st respondent, his case was that he had not been provided for and that he was resident on 6340 which the 1st applicant had taken. He has an equal claim to the estate of the deceased, and it is a relevant consideration that, as much as it is possible, a beneficiary should not be dislocated from where he/she has always lived.

7. 6339, 6340, 6341, 6342 and 6343 do measure 0.08 Ha, 0.06 Ha, 0.05 Ha, 0.07 Ha and 0.10 Ha, respectively. In the proposal by the 1st respondent, the 1st applicant was being given 6342, but there was no dispute he was resident on 6340. In the proposal by the 1st respondent John Kariuki Mbatia had been asked to share 6341 with his brother. He has an equal claim to the estate. The 1st applicant gave him an equal portion.

8. In the proposal by the 1st respondent she asked to be registered in respect of 6340 which she was going to own jointly with her daughters. She was supported by her daughters. For some reason, the daughters did not want to each make a claim equal to what the sons were each going to get. They were relinquishing their claim to equal sharing.

9. That being the case, I order that titles Dagoretti/Riruta/6339, 6340, 6341, 6342 and 6343 shall be

cancelled. A fresh subdivision shall be done so that there will be 4 equal portions to be inherited, one each by the 1st applicant Peter Kabui Mbatia, 2nd respondent Simon Thairu Mbatia and John Kariuki Mbatia, and one portion to be jointly registered in the names of the 1st respondent (Elizabeth Njeri Mbatia), Margaret Wanjiku Kungu, Gladys Njeri Mbatia, Jennifer Wambugu Mbatia, Jane Wanjiku Mbatia and Naomi Wambui Mbatia. As much as it is practicable, each beneficiary should be registered in respect of the portion where he/she is presently residing.

DATED and DELIVERED at NAIROBI this 5TH day of MARCH 2018.

A.O. MUCHELULE

JUDGE