



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSES NO. 37 OF 2006

In the matter of the Estate of NAHASHON NGIGI GICHOMO (Deceased)

ZIPPORAH WAIRIMU WAMBUGU.....APPLICANT

V E R S U S

ELIUD WACHIRA NGIGE.....PETITIONER

R U L I N G

1. The applicant Ziipporah Wairimu Wambugu is the widow of one Peter Wambugu Gichomo, now deceased. In her summons General brought under Rules 49, 59 and 73 Probate and Administration Rules seeks for the following prayers:-

(a) That three acres out of L.R. Baragwi/Thumaita/487 be registered in the name of the applicant.

(b) That the registration of the three acres out of the Baragwi/Thumaita/487 be discharged from these succession proceedings.

(c) That the order of Senior Resident Magistrate Kerugoya in Succession Cause No. 55 of 1996 on 14/06/2005 be set aside.

2. The summons are grounded on the affidavit of the applicant. She deposes that the interest of her late husband in L.R. Baragwi/Thumaita/487 is three acres conferred to him by Senior Resident Magistrate Kerugoya in SRMCC No. 87 of 1993. This interest was upheld by the High Court sitting at Nyeri in HCA No. 68 of 1993.

3. It is further stated that in 2004 the High Court ordered removal of cautions to facilitate sub-division and transfer of the land to the deceased. The transfer and registration of the 3 acres was done in favour of Peter Wambugu Gichomo and title deed issued.

4. The applicant stated that the SRM Kerugoya in Succession Cause No. 55 of 1996 ordered cancellation of the sub-division, transfer and registration of the 3 acres of Peter Wambugu Gichomo on 4/06/2005. Subsequently Peter Gichomo filed a protest in Succession Cause No. 37 of 2006 which led to issuance of injunctive orders against one Edwin Mwai Kiruai from interfering with the three acre portion.

5. The High Court later issued an order to remove the trespasser from the deceased's portion of three acres. The applicant states that she has no interest in the rest of the land in Baragwe/Thumaita/487 and it may be inherited by the family of Nahashon Ngige Gichomo who was a brother to her late husband.

6. It is important to note that the land dispute between Peter Wambugu Gichomo and his brother Nahashon Ngige Gichomo had been determined in Kerugoya SRMCC No. 87 of 1993 and Wambugu Gichomo given the three acres he was claiming.

7. Nahashon appealed and the High Court Nyeri dismissed the appeal. The title for the three acres was issued in favour of Peter Wambugu Gichomo with new parcel being L.R. Baragwe/Thumaita/2736.

8. The record shows that the senior Resident Magistrate Kerugoya who later canceled the registration in Succession Cause No. 55 of 1996 had no jurisdiction to overturn the judgment of the High court. The beneficiaries in the estate of Nahashon Gichomo in this cause did not disclose the existence of the judgment of the courts in SRMCC No. 87 of 1993 and in HCA No. 68 of 1993.

9. This court further observes that Peter Gichomo later obtained an order from the High Court to be put back on his land by a court bailiff. However, it appears that the orders for cancellation of the title of L.R. Baragwe/ Thumaita/2736, by the Senior Resident Magistrate were not set aside. This succession court in principle acknowledged the interest of Peter Gichomo when orders were issued in his favour to put him back on his land and to evict a trespasser thereon. In ignorance of the law, the said Peter Gichomo did not apply to set aside the said orders.

10. The applicant has made it clear that she has no interest in this cause apart from the three acres belonging to her late husband which interest had been determined by a superior court.

11. The record shows that the petitioner Eliud Wachira Ngige who is the son of the deceased Nahashon Ngige Gichomo had proposed in his application for confirmation of grant dated 17/01/2007 that Peter Wambugu Gichomo be given his three acres. This demonstrates that the family of the deceased Nahashon Ngige Gachomo in this cause does not dispute the interest of the applicant herein.

12. However, there is the 2nd objector in the case one Edwin Mwai Kiruai who claims to have bought land from the deceased. Nahashon Ngige Gichomo. It is my considered opinion the 2nd objector's claim should not affect the interest of the applicant and her family since the High Court had already dealt with the matter. He had been evicted from the land in the course of these proceedings. His claim was against the estate of Nahashon Gichomo but not against Peter W. Gichomo. The option the 2nd objector has it to claim from the share of the deceased in this cause.

13. The succession cause file No. 55 of 1996 was forwarded to this court and given a new number High Court Succession Cause No. 37 of 2006. The applicant has made her claim in the right forum. She was substituted in place of her late husband who was the 1st objector in this case.

14. I find the application merited and allow it as prayed. In effect the orders of the Senior Resident magistrate issued on 14/06/2005 in Succession Cause No. 55 of 1996 is hereby set aside.

15. The title in favour of Peter Wambugu Gichomo in L.R. Baragwe/Thumaita/2736 and that of Nahashon Ngige Gichomo L.R. Baragwi/Thumaita/2735 to be reinstated. This succession cause to proceed in respect of L.R. No. Baragwe/Thumaita/2375 which was found to be the rightful share of the deceased herein Nahashon Ngige Gichomo.

16. There will be no order as to costs.

17. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF APRIL, 2018.

F. MUCHEMI

J U D G E

In the presence of:-

The applicant