



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 110 OF 2015

IN THE MATTER OF THE ESTATE OF PETER GIKURUMI NGWIRI

alias PETER GIKURUMIDECEASED

BETWEEN

JANE C. MUTHONI KARANI PETITIONER/APPLICANT

AND

JOSEPH WAINAINA GIKURUMI RESPONDENT/APPLICANT

R U L I N G

1. The applicant has petitioned this court that land parcel Number Kitale Municipality Block 6/148 be sold and the proceeds be shared equally among the beneficiaries. She alleges in her supporting affidavit to the application dated 10/4/2018 that the said parcel of land measuring 50x100 Feet is so tiny that it cannot be shared equally and even if done it cannot serve a better economic purpose.
2. The applicant has gone on to state that his brother the respondent is benefiting from the rent collected from the said parcel of land yet he is not paying any liabilities to wit, rent due to the County government.
3. The Respondent, who is the brother to the applicant has denied the above allegations. He states in his replying affidavit sworn on 16/4/2018 that there is not much rent collected from the said parcel and that it has been his desire that the same be developed to benefit all the beneficiaries.
4. From what is available on record it appears that there are 3 beneficiaries to the property, namely, the applicant, the Respondent and one Mary Muthoni Wanjiru the daughter of Anne Wanjiku Gikurumi.
5. The applicant has had the parcel registered in her own name and she states that she holds it in trust for the rest of her siblings.
6. Looking at the pleadings herein and the rival affidavits, I sense that there is bad blood between the two and that Mary Muthoni Wanjiru has been at the centre of all this. That she is 38 years and of ill health. I do not have any records to show that she is totally incapacitated but from the attached pictures she appears physically challenged.
7. There is however nothing to show that the land cannot be divided between the beneficiaries. It is true that disposing the same could be an easier option. However, considering the value of the land and its strategically placed position, I find that the first option should be for the land to be divided among three beneficiaries.
8. The said beneficiaries should then each develop the portion due to him or her. Further each respective beneficiary may consider disposing first to the beneficiary or to any other 3rd party that may deem appropriate. I also take the view of the Respondent that the applicant is already married away and that he is the only one staying on the grounds.

Conclusion

9. The application dated 10/4/2018 is hereby dismissed. The court hereby orders that:-

- 1). Land parcel Number Kitale Municipality Block 6/148 be divided equally between the beneficiaries.

- 2). Each beneficiary upon (1) above being undertaken be at liberty to develop their respective portion.
- 3). Alternatively, and without prejudice to (2) above each beneficiary be at liberty to dispose their respective portion first to any willing beneficiary or thereafter to any other 3rd party.
- 4). The costs of subdividing as per order (1) above shall be met by each party on prorata basis.
- 5). Each party shall meet their respective costs.

Delivered, signed and dated at Kitale this 17th day of July 2018.

H.K. CHEMITEI

JUDGE

17/7/18

In the presence of:

Jane Muthoni – Applicant present

Joseph Wainaina – Respondent present

Kirong – Court Assistant

Judgment read in open court