



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 134 OF 1984

IN THE MATTER OF THE ESTATE OF EVANS KAMAU GATIBA Alias EVANS BORO KAMAU (DECEASED)

CATHERINE WAITHERA WAINAINA....APPLICANT

VERSUS

CECILIA NDUTA KAMAU.....RESPONDENT

JUDGMENT

1. The deceased Evans Kamau Gatiba alias Evans Boro Kamau died intestate on 6th May 1980. A grant of letters of administration intestate was issued to his widow Cecilia Nduta Kamau (the respondent) on 1st April 1993 and confirmed on 27th February 1996. Pursuant to the certificate of confirmation of grant Kiambaa/Ruaka/153 was to be shared between the respondent and her son Geoffrey Wainaina Evans (now deceased). The property was consequently subdivided into two portions, being Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253.

2. On 30th January 2017 Geoffrey Wainaina Evans filed an application seeking clarification on the mode of distribution of Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253, and referral of the matter to arbitration. Through the ruling of this court dated 29th September 2017 the matter was referred for mediation. Parties reached an agreement during the mediation and on 21st December 2017, a mediation agreement was filed in court subdividing Kiambaa/Ruaka/153 into 5 plots and sharing them between Cecilia Nduta Kamau and the estate of Geoffrey Wainaina Evans. A certificate of confirmation of grant was issued by this court on 26th January 2018 confirming the grant in accordance with the terms of the mediation agreement.

3. The applicant Catherine Waitthera Wainaina is the widow of Geoffrey Wainaina Evans who died on 15th November 2011. On 5th April 2018, she filed the present application dated 26th March 2018 seeking the revocation of land titles to Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253, and that the revocation orders be served on the relevant lands office and fresh titles issued in line with the confirmed grant dated 26th January 2018 to protect the estate of Geoffrey Wainaina Evans. The application was based on the grounds that:

a) the estate of Geoffrey Wainaina Evans, a beneficiary herein, is facing an eminent threat of being disposed of and his dependents deprived of their inheritance unless this court intervenes in the manner sought;

b) this matter was subjected to a mediation process following the death of Geoffrey Wainaina Evans through which a mediation agreement was executed by all parties involved and it was agreed that the titles issued, to wit, Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253 following the subdivision conducted on Kiambaa/Ruaka/153 be revoked and the land sub-divided into five plots as reflected in the survey plan dated 15th December 2017;

c) following the said mediation agreement the matter was placed before Justice Musyoka and a certificate of confirmation of grant dated 26th January 2018 was issued reflecting the subdivision conducted to reflect the said survey plan;

d) that the titles Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253 are yet to be revoked as no such order has been served to the relevant lands office and the applicant is apprehensive that the deceased's estate will be sold off if the orders sought are not granted and fresh titles issued in line with the confirmed grant;

e) the applicants visited the Kiambu Lands office to confirm the status of the titles in an attempt to have the transfer of the same effected where they were advised to obtain a revocation order in respect of the titles in Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253 and letters of administration of the estate of Geoffrey Wainaina Evans; and

f) the beneficiaries of the estate of Geoffrey Wainaina Evans are in the process of obtaining letters of administration of the said estate to enable registration and transfer of the stated land titles, which process takes long and it is imperative that this court intervenes in the manner sought and ensure that the estate is protected.

The application was supported by the affidavit of the applicant.

4. The application was not opposed.

5. The applicant filed her written submissions which have been considered.

6. I note that according to the mediation agreement dated 21st December 2017 and filed in court on the same day, the parties involved in this matter agreed to subdivide Kiambaa/Ruaka/153 into 5 plots to be shared between the respondent and the estate of Geoffrey Wainaina Evans. A certificate of confirmation of grant was issued by this court on 26th January 2018 in accordance with the terms of the mediation agreement. The consequence of the mediation agreement and the certificate of confirmation of grant dated 26th January 2018 is that Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253 reverted back to the original title Kiambaa/Ruaka/153 which was then to be subdivided into 5 plots to be shared between the respondent and the estate of Geoffrey Wainaina Evans. The applicant has moved this court on behalf of the estate of her late husband Geoffrey Wainaina Evans in a bid to protect the interest of the estate. The application is brought in good faith, and the same is not opposed. I allow the present application as prayed.

7. Titles numbers Kiambaa/Ruaka/5252 and Kiambaa/Ruaka/5253 shall be cancelled and/or revoked so the property reverts back to its original number Kiambaa/Ruaka/153. The property under title number Kiambaa/Ruaka/153 shall be registered in accordance with the terms of the certificate of confirmation of grant dated 26th January 2018 and fresh titles issued to that effect. This being a family matter, each party shall bear their own costs.

DATED and DELIVERED at NAIROBI this 2ND day of OCTOBER 2018.

A.O. MUCHELULE

JUDGE