



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 1094 OF 2007
IN THE MATTER OF THE ESTATE OF SERAH NJERI GATHU (DECEASED)

RULING

1. The summons for determination dated 29th May 2015, seeks three principal orders -

(a) that the respondents to the application to allow the applicant to enter and take possession of her portion of Limuru/Bibirioni/1221 measuring 0.85 acres pending the hearing and determination of the application dated 6th February 2014;

(b) that the respondents be restrained from interfering with the applicant's share of Limuru/Bibirioni/1221 measuring 0.85 acres pending the hearing of the objection by the respondents; and

(c) that the officer commanding the Tigoni Police Station and or the Chief do supervise the enforcement of the orders.

2. The applicant is the administrator of the estate of the deceased. Limuru/Bibirioni/1221 was originally owned by the father of the applicant, who predeceased the deceased. The applicant's mother died when the applicant was a child of tender years. She was subsequently adopted informally by the deceased who raised her. After the death of her father, Limuru/Bibirioni/1221 was transferred upon transmission to Serah Njeri Gathu, Teresia Nyambura and Jackson Kieya in the proportions of 0.85 acres, 0.95 acres and 0.60 acres, respectively. The applicant lived with the deceased on her portion measuring 0.85 acres, but upon her demise she was chased out by Teresia Nyambura and Jackson Kieya, the respondents herein, who subsequently took possession thereof.

3. The applicant obtained representation to the estate of the deceased, the 0.85 acres were devolved to her on confirmation and she was subsequently registered as proprietor thereon. However, in spite of that the respondents refused to allow her to take possession of the property, instead they applied for the revocation her grant.

4. The annexure attached to the applicant's affidavit is copy of an official search dated 7th November 2008. It is in respect of Limuru/Bibirioni/1221, showing that that property was on 30th January 1999 registered in favour of the deceased and the respondents as tenants in common in the proportions set out in paragraph 2 hereabove.

5. The reply to the application is by Mary Gathoni Gathu. Her affidavit was sworn on 5th December 2015. She pleads that she and her colleagues have a pending revocation application, which would be defeated

should the applicant be allowed to occupy the 0.85 acres. There is also an affidavit by Teresia Nyambura which is in similar terms. She states that her children are in possession of the 0.85 acres.

6. The application was argued orally on 30th May 2016. Mr. Wainaina stated the case for the applicant while the respondents' case was urged by Mr. Chelagat. Both sides breathed life to the averments made in the affidavits on record.

7. Njagi J., by a ruling delivered on 20th July 2012, made a categorical finding that the applicant herein was a child adopted by the deceased herein and therefore she was a child of the deceased and that section 38 applied to her.

8. Basing myself on the finding by Njagi J. of 20th July 2012, I ordered, on 31st January 2014, that the applicant be appointed sole administrator of the estate of the deceased, and reinstated a certificate of confirmation of grant dated 18th July 2008, which had devolved the 0.85 acres of Limuru/Bibirioni/1221 to her absolutely.

9. The 0.85 acres have devolved upon the applicant. It is her property absolutely. No orders have been made to displace the orders made on 31st January 2014. I concede that there is a revocation application on record, but the same does not in any way bar the applicant from occupying the land in question. Even if one were to go by the decision by Njagi J. which I reviewed on 31st January 2014, the applicant would still be entitled to be in possession, for that court had granted the applicant half share of the 0.85 acres.

10. I shall resolve the application dated 29th May 2015 in the following terms –

(a) that the said application is allowed in the terms proposed in prayers 1, 2 and 3 thereof, save that the enforcement of the said orders shall be overseen by the officer commanding the Tigoni Police Station, in conjunction with the Chief of the area;

(b) that once put in possession the applicant shall not sell or mortgage or charge or part with possession of the 0.85 acres of Limuru/Bibirioni/1221 pending further orders;

(c) that the estate comprises of assets situated within Limuru of Kiambu County, consequently the matter shall be transferred to the High Court of Kenya at Kiambu for final disposal; and

(d) that the applicant shall have costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE