



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 923 OF 2012

IN THE MATTER OF THE ESTATE OF RACHEL WAMBUI CHEGE – DECEASED

MARY WAITHERA CHEGE.....1ST ADMINISTRATOR/APPLICANT

VERSUS

EVANS MUTHEMBA CHEGE.....2ND ADMINISTRATOR/RESPONDENT

JUDGMENT

1. The deceased Rachel Wambui Chege died intestate on 18th March 2011. She was survived by the following children:-

- a. John Kibara Chege – son;
- b. Peter Kariuki Chege – son;
- c. Evans Muthemba – son;
- d. Mary Waithera Chege – daughter;
- e. Peris Njeri Kiarie – daughter;
- f. Irene Nguhi Chege – daughter;
- g. Hannah Wanjiru Mwangi – daughter; and
- h. Elizabeth Wanjiru Kinuthia – daughter in-law.

She was the wife of Geoffrey Chege Kioi who died on 8th August 1993. She filed High Court Nairobi Succession Cause No. 2132 of 1994 to inherit him. This is how she came to be registered in respect of the land parcel Kabete/Lower Kabete/6 following certificate issued on 20th March 1998. By the time she died she had subdivided the parcel into various parcels including Kabete/Lower Kabete/1998, 2003, 2022, 2006, 2007, 2008, 2123, 2004, 2656, 2127, 2005 and 2650.

2. On 21st November 2014 this court issued a joint grant to Mary Waithera Chege and Evans Muthemba Chege. On 7th October 2015 Mary Waithera Chege applied to have the grant confirmed. She proposed

that the estate be shared as follows:-

- a. Kabete/Lower Kabete/1998 – Elizabeth Wanjiru Kinuthia – 0.824 Ha;
- b. Kabete/Lower Kabete/2003 – Elizabeth Wanjiru Kinuthia - 0.061 Ha;
- c. Kabete/Lower Kabete/2022 – Evans Muthemba Chege – 0.732 Ha;
- d. Kabete/Lower Kabete/2006 – Evans Muthemba Chege – 0.061 Ha;
- e. Kabete/Lower Kabete/2007 – Irene Nguhi Chege – 0.061 Ha;
- f. Kabete/Lower Kabete/2008 – to be shared equally among John Kibara Chege, Peter Kariuki Chege, Evans Muthemba Chege, Mary Waithera Chege, Peris Njeri Kiarie, Hannah Wanjiru Mwangi and Elizabeth Wanjiru Kinuthia;
- g. Kabete/Lower Kabete/2123 – Peter Kariuki Chege – 0.101 Ha;
- h. Kabete/Lower Kabete/2004 – 0.061 Ha;
- i. Kabete/Lower Kabete/2656 – Evans Muthemba Chege – 0.302 Ha;
- j. Kabete/Lower Kabete/2127 – John Kibara Chege – 0.101 Ha;
- k. Kabete/Lower Kabete/2005 – 0.061 Ha;
- l. Kabete/Lower Kabete/2650 – John Kibara Chege – 0.176 Ha;

She further proposed that the proceeds from Yu Telecommunication mast on Kabete/Lower Kabete/2007 be shared equally among the beneficiaries less legal fees, and that Evans Muthemba does account for the rent proceeds from Kabete/Lower Kabete/2008 amounting to Kshs.1,344,000/= and the same be shared equally among the remaining seven beneficiaries. John Kibara Chege, Peter Kairuki Chege, Peris Njeri Kiarie and Irene Ngihi chege supported the application and the distribution.

3. Evans Muthemba Chege swore an affidavit opposing the distribution and proposing his. According to him the deceased Rachel Wambui Chege had, by the time of her death, shared out her property in the following terms:-

- a. Mary Waithera Chege – Kabete/Lower Kabete/2018 which she had sold to Lawrence Kinuthia and Alice Wangui Mwaura on 9th January 2007;
- b. Peris Njeri Kiarie - Kabete/Lower Kabete/2019 which she had sold to Lawrence Kinuthia and Alice Wangui Mwaura on 24th April 2007;
- c. Irene Nguhi Chege - Kabete/Lower Kabete/2020 which she had sold to Simon Muroki Crispus and Irene Wanjiru Ndegwa on 22nd June 2006;
- d. John Kibara Chege - Kabete/Lower Kabete/2001 and 2005 and he had subdivided 2001 into 2125, 2126, 2127, 2223, 2650 and 2651; and sold 2125 and 2126 to Ndiho Njoroge, 2223 to George Mbugua and 2651 to Westmony Investors; and left with 2005, 2127 and 2650;
- e. Evans Muthemba Chege - Kabete/Lower Kabete/2006, 2022, 2007 and 2008; subdivided 2022 into 3114, 3178, 3179, 3391 and 3392; sold 3114 to Zonic Technologies, 3178 to Westmony Investments, and 3391 to Itrade Company; leaving him with 3392, 0.264 Ha, 3179 0.104Ha, 2006 0.061Ha, 2007 0.061Ha and 2008 0.217 Ha;

f. Peter Kariuki Chege – Kabete/Lower Kabete/2002 and 2004; subdivided 2002 into 2123, 2122, 2121, 2656 and 2657; sold 2121 to Oliver Githinji, 2122 to Morris Kiarie Njenga, 2657 to Carol Kirimi and 2656; and left with 2004 061 Ha and 2123 0.101 Ha;

g. Elizabeth Wanjiru Kinuthia – Kabete/Lower Kabete/1998 and 2003; subdivided 1998 into 3004, 3005, 3006, 3169, 3222 and 3223; sold 3005, 3006, 3169 and 3222, and left with 2003 0.061Ha, 3004 0.061Ha and 2223 0.309 Ha;

h. Hannah Wanjiru Gikonyo – Kabete/Lower Kabete/2021 which she subdivided into 2185 and 2186 which she had sold.

Elizabeth Wanjiru Kinuthia swore an affidavit to support Evans Muthemba Chege. The case of Evans Muthemba Chege was that his parents gave him 2007 and 2008, and that all the improvements on 2008 were done by him following the death of their mother. He did this knowing this was his property.

4. John Kibara Chege gave evidence to say that indeed their mother (the deceased) had indicated to each of them what their respective parcels were, and each of them had settled on what was given. She was left with her homestead on 2007, and 2008 had rental houses built by her. He asked that Irene Nguhi Chege (their youngest sister) be given 2007 as she was the one who had stayed with their parents all along. As for 2008 he asked that it be shared to all of them equally.

5. Evans Muthemba Chege testified to say that while his father was alive he (Evans) supervised the construction of the rental houses, and following the death of the father he completed the construction. His father gave him 2007 and 2008, and this was confirmed by his mother before she died. He was supported in his evidence by Grace Wangari Gaitho (DW 2) and Joan Chege Kaguru (DW 3). Both said they were related to the family. It is notable that Evans Muthemba said that the initial Kabete/Lower Kabete/6 was subdivided into 1214 and 1215, and 1215 sold to raise money to develop the rental houses. It is this development that he was supervising. It is not in dispute that it is him who collects the rent on 2008. They are 8 houses on it. John Kibara Chege says each earns Kshs.6,000/= per month. He stated that Evans was not close to their parents (he lives in Mombasa) and therefore could not have been given the two plots. He denied that Evans expended his money on 2008. He said it was their father who did the developments. Lastly, he stated that each child was given property by their mother (the deceased) before she died. He sold some of it to build rentals.

6. From all the evidence available, it does appear to me that the deceased Rachel Wambui Chege, following the succession proceedings in respect of her late husband, distributed part of the estate to the beneficiaries. What was left is the subject of these proceedings. Evans Muthemba Chege stated that he partly developed the rentals on 2008 which John Kibara Chege denied. Evans admitted that their father sold 1215 to undertake the development. That was also the evidence of John. Evans produced no evidence at all of any contribution towards the development. I do not accept his evidence and neither do I accept his evidence that he was given 2007. The parcels their mother gave them were transferred, and that is why they were able to sell.

7. At the end of the day, I accept the proposal by Mary Waithera Chege as contained in paragraphs 6, 7, and 8 of the affidavit sworn by her on 6th January 2015 to support her application for confirmation. On that basis I confirm the grant jointly issued to her and Evans Muthemba Chege. Each side shall bear their own costs.

SIGNED and DATED at NAIROBI this 24th JANUARY 2017

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 24th JANUARY 2017

W. MUSYOKA

JUDGE