



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE 383 OF 2013
IN THE MATTER OF THE ESTATE OF ELIZABETH WAMAITHA MAINA ALIAS WANJIRA (DECEASED)
RULING

1. Vide summons dated 10th October 2017 but filed on 27th October 2017, the applicant herein sought orders as hereunder:

- a. That the grant confirmed on 3rd June 2014 be rectified.**
- b. That the mode of distribution of the deceased's estate be rectified.**
- c. That the name of Stephen Kinuthia Wamaitha (deceased) be removed as administrator of the estate of the deceased Elizabeth Wamaitha Maina alias Elizabeth Wanjira.**
- d. That the Registrar Lands Office Nairobi do have new title deed No. Dagoretti/Riruta/4638 and Dagoretti/Riruta/4636 without the name of Susan Muthoni who used to be trustee but now deceased.**
- e. That the name of Agnes Muthoni Wamaitha (deceased) be removed and replaced by her son and daughter namely Joseph Ndungu Muiruri and Elizabeth Wanjira Muiruri.**
- f. That costs of this application be provided for.**

2. Filed pursuant to Sections 71 and 74 of the Law of Succession Act and Rules 43(i) and 73 of the Probate and Administration rules, application is supported by grounds on the face of it and affidavit in support deponed on 10th October 2017 by Virginia Nyambura and Joseph Njoroge Wamaitha (hereinafter referred to as the applicants).

3. According to the applicants, a grant of letters of administration intestate in respect of the estate herein was issued on 22nd May 2013 to the applicants and one Stephen Kinuthia Wamaitha jointly. On 3rd June 2014, the said grant was confirmed with Cecilia Njoki Githuku, Maina Kimani Wamaitha, Virginia Nyambura, Rose Wanjiku Wamaitha, Joseph Njoroge Wamaitha, Stephen Kinuthia Wamaitha, Jane Waringa Wamaitha, Jackline Gathoni Wamaitha and Deborah Wanjiru Wamaitha sharing LR No. Dagoretti/Riruta/4638 equally. Similarly, LR No. Dagoretti/Riruta/4636 was jointly shared between Virginia Nyambura, Joseph Njoroge Wamaitha and Stephen Kinuthia Wamaitha

4. As fate would have it, Stephen Kinuthia one of the administrators died on 20th April 2016 before completion of the administration of the estate hence the prayer to remove his name. Attached to the application is a death certificate in respect of the said Stephen marked "VJI". Having perused the affidavit in support and death certificate attached, I am convinced that to facilitate and expedite execution of the grant, the name of the deceased administrator ought to be removed leaving the two surviving administrators as the only personal representatives. Accordingly, prayer two is allowed as prayed and afresh grant shall issue in the name of the two surviving administrators.

5. Regarding the prayers directing Land Registrar to remove the name of one Susan Muthoni from LR No. Dagoretti/Riruta/4636 and 4638, the court must first take into account the beneficial interest of Susan Muthoni in those parcels. I have examined the confirmed grant herein and the title deeds attached thereto. It is clear from the title deeds that the deceased herein Elizabeth Wamaitha Maina and the said Susan Muthoni now deceased were registered as joint tenants in common.

6. Having been registered as joint tenants in common, it then means that the two were entitled to half share as their distinct beneficial interest. Consequently, the confirmed grant issued on the 3rd June 2014 ought to have shared out Elizabeth's half share with respect to the two parcels of land leaving half share for Susan Muthoni untouched. It was therefore erroneous to have shared out the whole share including Susan Muthoni's share who was still alive. It is trite law that a living person cannot be inherited and worse still through a succession cause of a joint owner of any property.

7. Accordingly, the confirmed grant herein shall be amended so as to reflect distribution of the estate in respect of the deceased's half share out of LR parcel Nos. Dagoretti/Riruta/4636 and 46388.

8. As to the remaining half share of Lucy Muthoni, her dependents or heirs shall process a separate succession cause to inherit her half share and the same cannot be done through this file.

9. Concerning the death of Agnes Muthoni Wamaitha and Stephen Wamaitha deceased beneficiaries, their death certificate attached marked "VJ3" and "VJ2" respectively are sufficient proof that they are no longer alive. Naturally their heirs shall be entitled to their shares. However, there is no proof either from the area Chief or a special grant of letters of administration ad litem that Joseph Ndungu Muiruri and Elizabeth Wanjira Muiruri are the only dependants of the late Agnes Muthoni. The same fate shall befall the late Stephen Wamaitha's share as his children are not mentioned.

10. Besides, the proposed mode of redistribution and consent signed and dated 10th October 2017 have proposed that the two parcels of land as a whole be held by the administrators in trust for the children of the late Agnes Muthoni and Stephen Wamaitha. The same proposal goes further to share the same parcels of land to the rest of the beneficiaries as per the original grant of 3rd June 2014. It is not possible to give the two parcels as a whole to the administrators to hold in trust for some beneficiaries and on the other hand give the same to somebody else.

11. As stated earlier, the applicants/administrators cannot distribute the share of Susan Muthoni under this succession file. They can only share out half share belonging to the deceased Elizabeth and thereafter file a separate succession case in respect of their aunt Susan Muthoni in relation to her half share. As to the deceased Agnes Muthoni and Stephen Wamaitha, they should file either a letter from the area Chief confirming the list of dependants of the deceased/beneficiaries or a grant of letters of administration ad litem in respect of their estates.

12. Having made the above finding, application herein is allowed in terms of prayer two and that an amended grant do issue reflecting the deceased assets as half share in LR Nos. Dagoretti/Riruta/4638 and 4636.

Order accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 14th DAY OF FEBRUARY 2017.

J.N. ONYIEGO (JUDGE)

In the presence of:

The second applicant..... in person

Mr. Edwin.....Court Assistant

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