



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 251 OF 2010

IN THE MATTER OF THE STATE OF KIMUNYA MBUTU GICHIRU (DECEASED)

JOHN NJUGUNA KIMUNYA..... APPLICANT

TERESIAH WACUKA KIMUNYARESPONDENT

JUDGMENT

1. The deceased Kimunya Mbutu died on 27th April 1990 and was survived by the following dependants.

- i. Teresiah Wachuka Kimunya
- ii. John Njuguna Kimunya
- iii. Margaret Wanja Karuma
- iv. George Ngarua Kimunya
- v. Maryann Njoki Kimunya
- vi. Francis Kinge Kimunya
- vii. Jane Wangari Kimunya
- viii. John Waiganjo Kimunya
- ix. Stephen Njino Kimunya

2. The respondent and widow of the deceased petitioned for letters of administration intestate in Kiambu principal Magistrate Court in succession cause no 141 of 2005 and was issued with the same on 9th January 2007. Subsequently she filed for confirmation of the same on 23rd May 2008 but John Njuguna declined to sign the consent as he was opposed to the proposed mode of distribution as he wished that each of the beneficiaries to be given their share instead of the same being held by the respondent on behalf of the beneficiaries. However, the grant was eventually confirmed on 22nd August 2008 and the deceased sole asset ***Title Ndumberi/Riabai/184*** was registered in the names of the respondent herein. On or about 13th January 2010 the respondent caused the said parcel of land to be subdivided into two portions namely ***Ndumberi/Riabai/4089*** and ***Ndumberi/ Riabai/4090***. She transferred one portion ***Ndumberi/Riabai/4089*** to one Geoffrey Situma Wanyonyi who was not a beneficiary to the deceased.

3. This prompted John Njuguna Kimunya to institute this suit via application dated 12th February 2010 seeking orders that;

i. The letters of administration and certificate of confirmation of grant issued to the respondent herein on the 9th January and confirmed on 26th August 2008 respectively be revoked and annulled.

ii. That any future transactions involving land parcel number **Ndumberi/Riambai/4090** be stayed pending the hearing and determination of this application and or until further orders of this honorable court.

iii. That costs of this application be provided for.

4. John Njuguna also filed a suit in the Land and Environment Court being E.L.C No. 92 of 2010 against the respondent herein and seeking orders of injunction preserving the properties namely **Ndumberi/Riabai/4089** and 4090 and cancellation of the subdivision parcel number **Ndumberi/Riabai/184** into **Ndumberi/Riambai/4089** and **4090**. Unfortunately John Njuguna died on 20th August 2012 while the two cases were still pending. His son James Gathu Njuguna was nominated by his family and he applied for a limited grant of letters of administration ad litem for purposes to pursue the subsisting cases. This court issued him with the limited granted on 7th February 2013 and allowed his application substituting the deceased on 29th May 2015. The land and Environment Court had also issued a temporary injunction preserving the properties pending hearing and determination of that suit and on 5th June 2015 the said court allowed his application to substitute his deceased father in order to prosecute the said suit. the applicant argues that the respondent acted unlawfully in purporting to dispose of matrimonial property which property she was holding on behalf of the beneficiaries of the estate of his late grandfather as a result his late father's estate is yet to receive its share of the estate.

5. The respondent's advocate on record was served with this application as evidenced by the return of service filed on 6th December 2016. Despite the said service, the respondent never filed a response to the said application.

6. The matter came for hearing on 3/10/2016. The applicant reiterated the averments in his affidavit.

7. He filed his submissions, which was a reiteration of the averments in the affidavit in support of the said application.

8. The application is not opposed. A perusal of the documents on record give a reflection of the chronology of events leading to the current application. The certificate of confirmation dated 26th August 2008 confirmed to the effect that **Land parcel no. Ndumberi/Riabai/184** be registered under Teresiah Wacuka Kimunya. It is clear that in her petition she had listed all the beneficiaries surviving the deceased as such the confirmation she was to hold the said parcel of land in trust of all the other beneficiaries. Her actions to subdivide and transfer to a non-beneficiary in my view goes against the law.

9. The applicant seeks to annul and revoke the grant of letters of administration intestate issued on 9th January 2007 and confirmed on 26th August 2008. Section 76 provides that, "*A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—*

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;

or

(ii) to proceed diligently with the administration of the estate;"

The respondent after the said confirmation has not shared out the said parcel of land to the other

beneficiaries as she is supposed to but instead has sought to subdivide and transfer a portion of the said parcel of land to a third party who is not a beneficiary of the deceased. In my view, the respondent as administrator of the deceased estate has failed to carry her duties diligently in distribution of the said estate upon confirmation of the said grant.

Section 83(f) vests the duty of distribution of the assets upon the administrator it sates, “*subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;*”

10. The respondent by failing to ensure distribution to the respective beneficiaries after confirmation is a failure to proceed diligently in administration of the deceased’s estate as such I find that the applicant’s application has merit and revoke the grant of letters of administration granted to the respondent on 9th January and confirmed on 26th August 2008. I refrain to make orders regarding land parcel number ***Ndumberi/Riambai/4090*** to avoid issuing conflicting orders as the matter regarding the same was before the ELC in case no. 92 of 2010. Costs in the cause. It is so ordered.

Dated, signed and delivered this 16th day of March ,2017.

R. E. OUGO

JUDGE

In the presence of;

Mr. Alosa H/B Mr. KariukiFor the Applicant

AbsentFor the Respondent

MS. Charity

Court Clerk