

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1506 OF 1997

IN THE MATTER OF THE ESTATE OF GEORGE RAGUI KARANJA (DECEASED)

RULING

1. On 5th February 2016, I appointed new administrators of the estate herein, and directed that the new administrators apply for a review of the confirmation orders on record herein. In compliance with the said directions, an application dated 17th March 2016, was lodged herein on 24th March 2016 by two of the administrators, supported by six of the survivors of the deceased. The affidavit in support of the application was sworn by the two administrators/applicants, Koigi wa Wamwere and Nelly Wanjiku Kuria, on 4th March 2016.

2. They aver that the previous administrators had not managed to distribute four of the assets of the estate, that is Dagoretti/Uthiru/146, Dagoretti/Kangemi/173, LR 44 Uthiru Market Commercial Plot and Plot No. 44 Mwana Mukia. They aver that the said assets are still under the name of the deceased, and are still available for distribution amongst the ten survivors of the deceased. They propose redistribution so as to accommodate the interests of the daughters of the deceased who had been left out of the distribution on the grounds that they were married daughters of the deceased, which amounted to gender discrimination. They also aver that a buyer of part of the estate should be provided for. The property had been disposed of by the previous administrators to settle a bank debt. It is also proposed that the surviving widow of the deceased had been granted the four assets in that respect. They propose equal division of the four assets between all the beneficiaries, and for the fifth plot to be allotted to the buyer. Eight of the beneficiaries have consented to the proposed review.

3. The other two administrators, Lincoln Kimwaki Ragui and George Ragui Karanja, who incidentally did not sign the consent signed by the other survivors in support of the proposed review, swore an affidavit on 14th April 2016 in opposition to the application. They argue that the confirmation application had been agreed upon by all, and there was therefore no reason to interfere with the orders. On Dagoretti/Uthiru/146 they state that various parties had taken possession and developed their portions. They state that Dagoretti/Kangemi/173 should be given to Rachael Wambu Ragui. They have not raised any issues with respect to the rest of the assets.

4. Both sides have filed further affidavits to answer the rival affidavits. I have noted that the further affidavits have not raised serious objections to the proposed distribution.

5. On 8th June 2016, both sides invited me to rule on the matter based on the affidavits on record.

6. The application seeks two principal orders – rectification of the certificate of confirmation of grant to remove the names of the previous administrators and to replace them with those of the new current administrators, and review of the administration.

7. The orders for rectification are consequential upon the revocation of the previous grant and the appointment of new administrators. The old grant was a useless piece of paper that was inoperative for it could not be uttered for any purpose, for the persons who ought to have uttered it were all dead. Rectification thereof ought to follow as a matter of course.

8. Review of the confirmation orders could be a little more controversial. I note that the respondents do not support the proposed review. The proposed review would result in distribution that is equitable to all. The Law of Succession Act, Cap 160, Laws of Kenya, does not discriminate against daughters, whether

married or not. I am satisfied that the proposed review is merited. No one would be disadvantaged or prejudiced by the proposed review, and the same has the support of majority of the beneficiaries/survivors. The division on the ground should take into account the situation on the ground, in terms of occupation, possession and developments.

9. I shall therefore allow the application dated 17th March 2016. The certificate of confirmation of grant shall be amended as proposed. There shall be no order as to costs.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE