

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 435 OF 2006

IN THE MATTER OF THE ESTATE OF PETER GITAU KARANJA (DECEASED)

RULING

1. The application dated 16th December 2015 is brought at the instance of Anthony Karanja Gitau. It is brought against Regina Wambui Gitau, who is said to be the administrator responsible for the second house of the deceased. He would like her compelled to distribute the estate of the deceased pursuant to the order of the court of 14th October 2011, and in particular to allocate to him his share of the estate.
2. In his affidavit in support of the application, sworn on 16th December 2015, he states that at the confirmation on 14th October 2011 the property of the estate was divided into two as per the two houses of the deceased. He states that he is from the second house, and his mother, the respondent herein, was supposed to divide the property devolving upon her amongst all the children in the second house. The land in question is Loc 2/Kinyona/753. He says that he is now of age and should get his share of the property. He complains that his mother has refused to accede to his request in that behalf, and in fact kicked him and his family out of the property. He further claims that during lifetime, the deceased had given the respondent and her daughter, Sabina Wairimu Ng'ang'a, a piece of land known as Loc 2/Kangari/1932, which is now leased out to Safaricom Limited.
3. The applicant has attached some documents to his affidavit. There is a copy of the certificate of confirmation of grant extracted from the confirmation orders of 14th October 2011. According to the certificate, the estate of the deceased was distributed between the two widows of the deceased, Lydia Wambui Gitau and the respondent. The assets distributed are situated at Diani in Kwale, Embu and Kinyona at Murang'a. There is also a green card in respect of Loc 2/Kangari/1932. The said property was never in the name of the deceased, but on 19th February 1990 it was transferred to the joint names of the respondent herein, the applicant and Sabina Wairimu Gitau.
4. The response to the application is by Richard Nganga Kamiro, advocate for the respondent, on her behalf. His affidavit was sworn on 5th May 2016. He avers that the estate herein was distributed on 14th October 2011 when the grant was confirmed and the estate distributed equally between the widows. He states that the land in question was subdivided and title deeds issued in the respective names of the widows in trust for their respective children. There is therefore nothing outstanding, according to him, for further handling by the court. He has not attached any documents to support his assertions.
5. I have perused the court record, and noted that the grant herein was indeed confirmed. The estate was to be subdivided equally between the two houses of the deceased.
6. I agree with counsel for the respondent, that the court did distribute the estate. There is nothing outstanding for this court to do in this matter. If any of the children of the deceased are unhappy with their respective mothers' trusteeship of the property they hold in trust for them, they ought to initiate separate proceedings, either at the land court or at the civil court, to address their concerns.
7. In view of the above, I find no merit in the instant application. The same shall be dismissed with costs. None of the assets herein are situated in Nairobi. The family appears to be resident at Kinyona within Murang'a County. I shall accordingly order that the matter be transferred to the High Court of Kenya at Murang'a for disposal of any outstanding business.

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