



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 784 OF 1990

IN THE MATTER OF THE ESTATE OF MWAURA GITACHU (DECEASED)

TERESIAH WANGUMO MWAURA.....APPLICANT

VERSUS

DR. JOSHUA GITACHU MWAURA.....RESPONDENT

RULING

1. The deceased Mwaura Gitachu died intestate on 17th October 1989. He had three wives, namely Charity Wanjiku, Esther Thithi and Gladys Nyambura. He left a will in which he appointed his three sons (the respondent, Hezekiah Njuguna Mwaura and Henry Gitachu Mwaura) as joint executors. Each one of them represented a house. A grant of probate was issued to the executors on 2nd December 1990 and confirmed on 19th October 1997.

2. The applicant and the respondent belong to the house of Charity Wanjiku who died on 26th March 1982. Their siblings are Joyce Njeri Mwaura, Grace Wambui Ndungu, Lucy Wairimu Mwaura (deceased) and Irene Nyangonyo Mwaura. In the application dated 23rd September 2015, the applicant complained that the respondent had registered all the properties given to their house into his name absolutely and that had sold some of them. She asked that any sale and/or transfer be cancelled and that all the properties given to their house be registered in the name of the respondent to hold in trust for himself and for the other siblings. Further that, there be a restriction placed on Plot No. Location 1 Mugumoini/27 and Thika Municipality Block 20/2556 until the distribution of the estate is agreed upon. She swore an affidavit in support of the application.

3. It was clear that there was no dispute in regard to the other houses. In the submissions by counsel for the applicant, once the application is allowed the family (the house of Charity Wanjiku) will agree on how to distribute the estate left to them, failing which the court will distribute it in accordance with the law after a valuation of the property has been undertaken.

4. The applicant stated that the following were the bequests the deceased made to their house:

- a. ½ share of 2.5 acres of his shamba which comprised the homestead on LR No. LOC 1/Mugumoini/338;
- b. 5 acres in LR Loc. 1/Mugumoini/338;
- c. ½ of his interest in Honey Comb Ltd;
- d. 1/3 of his shares equivalent to one plot in Kianjau Farmers Coop Company Ltd;
- e. 3 shares at Ngoigwa Co. Ltd equivalent to 3 plots namely plot Nos. 2555 and 2556;
- f. Shares in Mbari-ya-Igi Company Ltd;
- g. Shares in Kandara Muhethu Co. Ltd;
- h. Shares in Barclays Bank Ltd;
- i. Plot No. 27 Mugumoini Location – The Bar;
- j. Plot No. 17 Mugumoini Location – Hides and skins business at Mugumoini.

She swore that the respondent had transferred parcel Thika Municipality Block 20/2555 from himself to one Terry Wairimu Wainaina and that he had entered into agreement to sell plot 17 Mugumoini to one Michael Kamau Mwaura. Whatever the case, it is evident that by paragraph 6 of the will the deceased declared as follows:-

‘I DECLARE that unless expressly provided to the contrary in this my Will the devises and bequests herein to my wives Thithi, Nyambura and son Dr. Mwaura shall mean bequests and devises to Thithi’s house, and to Nyambura’s house and to my deceased wife Wanjiku’s house and Thithi, Nyambura and Dr. Mwaura shall hold the devises and bequests to the respective houses UPON TRUST for themselves and for such of my children comprising the respective house.’

The property bequeathed to the respondent was meant for him and for the other children in the house of the late Wanjiku. He was directed in the will to hold such property in trust for himself and for his siblings.

5. On 18th June 2015 Henry Gitachu Mwaura (respondent’s co-executor) swore an affidavit and showed that all the deceased’s shares in Ngoigua Company Ltd, Mbari ya Igi Company Ltd, Kandara Muhethu Company Ltd, Barclays Bank Ltd, Honey Comb Company Ltd, Kianjau Farmers Cooperative Company Ltd, Hide and Skin Business at Mugumoini and in the Bar at Mugumoini were all transferred into the name of the respondent in absolute terms. This materially supports the applicant’s case.

6. Consequently, I allow the application. All the property listed in paragraph 4 above that form the bequest of the deceased to the house of the late Charity Wanjiku shall be registered in the name of the respondent to hold in trust for himself and for the applicant, Joyce Njeri Mwaura, Grace Wambui Ndungu, the estate of Lucy Wairimu Mwaura and Irene Nyangonyo Mwaura. Any previous registration over this property to the respondent or to any other person is hereby revoked and/or cancelled. Further, a restriction shall be registered against Plot No. Location 1/Mugumoini/27 and Thika Municipality Block 20/2556 until any further order by this Court. The costs of this application to be borne by the respondent.

DATED and DELIVERED at NAIROBI this 4th day of APRIL 2016

A.O. MUCHELULE

JUDGE