



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 754 OF 1996
IN THE ESTATE OF PETER KIHIA KARIUKI (DECEASED)
RULING

1. The application I am tasked with determining is dated 17th October 2011. It seeks that Dagoretti/Riruta/978 be subdivided in accordance with the certificate of confirmation of grant dated 2nd July 2003. There is also a prayer that the Deputy Registrar do sign the necessary forms to facilitate subdivision of the subject land.
2. The grounds upon which the application is premised are set out on the face of the application and in the affidavit sworn in support of the application by the 1st Applicant administrator, Felistus Njeri Kariuki. The grant was confirmed and the subject land was to be shared between the applicants and the respondent. The land has been subdivided on the ground, but transfer to the heirs has not been done. The transfer process is said to have been frustrated by the respondent who has refused to cooperate. She has refused to sign the relevant documents.
3. The applicant has attached to the application a certificate of confirmation of grant dated 2nd July 2003 which indicates that Dagoretti/Riruta/978 was to be shared between four individuals- Loice Nyokabi Kihia, Felistus Njeri Kariuki, John Kariuki Wanjiru and Peter Kihia Wanjiru at the ratios of $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$ and $\frac{1}{8}$, respectively. An order made on 15th November 2006 and issued on 11th January 2007 by Rawal J. commands the revocation of the registration of Loice Nyokabi Kihia and Julius Kihia as proprietors of Dagoretti/Riruta/978 and instead Loice Nyokabi Kihia, Felistus Njeri Kariuki, John Kariuki Wanjiru and LPeter Kihia Wanjiru be registered as proprietors. There is copy of a title deed in respect of Dagoretti/Riruta/978 dated 8th September 2008 demonstrating that the order of 15th November 2006 was complied with. Then there are copies of forms prepared under the Land Control Act for the subdivision of Dagoretti/Riruta/978 as per the certificate of confirmation of grant.
4. The application was replied to by the respondent, Loice Nyokabi Kihia, by an affidavit sworn on 15th November 2011. She says that she was not party to the consent orders of 15th November 2006 and further that she was not involved in applying for the relevant Land Control Board consent or even attending the Land Control Board. She asserts that the land in question should be shared between two individuals, not four.
5. The grant herein was confirmed in 2003, allowing distribution of the property amongst four individuals. The orders made in 2006 were to actualize the confirmation orders of 2003. The events before the Land Control Board similarly sought to give effect to the confirmation orders of 2003.

6. I note that whereas the respondent is complaining about the orders of 2006 and the events at the Land Control Board, she remains silent about the confirmation orders of 2003 which are the basis of all the events after 2003.

7. The orders of 2003 have not reversed by way of review or appeal. They remain in force. The events of 2006 and at the Land Control Board only sought to give effect to the said order.

8. It is quite clear to me, from the averments in the replying affidavit sworn on 15th November 2011, that the respondent is unwilling to comply with the confirmation orders of 2nd July 2003, and therefore not ready to cooperate with applicant to give effect to those orders through the subdivision of Dagoretti/Riruta/978 as per the certificate of confirmation of grant of 2nd July 2003.

9. I find merit in the application dated 17th October 2011. I do hereby allow the same in the terms proposed by the applicant. The respondent shall bear the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 10TH DAY OF JULY, 2015.

W. MUSYOKA

JUDGE

In the presence of Ms. Musyoka for Ms. Kageri advocate for the applicant.

No appearance advocate for the respondents.