



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CASE NO. 725 OF 2001
IN THE MATTER OF THE ESTATE OF
WANJOHI MUREITHI alias

EDWARD WANJOHI MURIITHI DECEASED

AND

ELIZABETH WAMBUI WANJOHI.....PETITIONER

RULING

1. ELIZABETH WAMBUI WANJOHI petitioned for grant of letters of administration in respect of the estate of WANJOHI MUREITHI and named the following survivors:

- a. Sarah Wangechi Wanjohi - 1st wife deceased.
- b. Edith Njokabi - 2nd wife
- c. Julia Wamaita
- d. Jackson Kariuki - Son
- e. Jane Wanjiru
- f. James Rugara - Son
- g. Francis Mureithi - Son
- h. Richard Mathenge - Son
- i. Peter Ndiritu -
- j. Julius Thumbi - Son
- k. Wilson Miumu - Son
- l. Alice Wanjiku
- m. Wanjiru Wanjohi -

2. The petitioner named the assets of the deceased as

THEGENGE/KIANJOGU/304

THEGENGE/KARIA/1157.

3. On 27th December 2001 the petitioner cited all the children of the deceased. On 12th April 2012 the petitioner filed summons for confirmation of grant which grant was confirmed on 13th July 2012. On 4th October 2012 the petitioner filed an application under Rule 73 for the honourable court to authorize the Deputy Registrar to sign all the relevant documents on behalf of the respondents herein which application was supported by the affidavit of the petitioner wherein she deponed that she was in possession of THEGENGE/KIANJOGU/304 while the 2nd respondent was in possession of tile No. THEGENGE/KARIA/1157 and that they had refused to sign relevant documents to facilitate transfer to give effect to the confirmed grant.
4. While the aforesaid application was pending James Rugara Wanjohi, Jackson Kariuki Wanjohi, Julia Wamaitha Thiriku and Jane Wanjiru Waihenya filed an application under Rule 49 and & 73 of P & A in which they sought an order that the certificate of confirmation of grant issued on 13th July 2012 be set aside on the basis that the applicant and the petitioner were the beneficiary of LR. THEGENGE/KARIA/1157 exclusive of JORAM KINGORI MURIITHI and that the distribution as per the confirmed grant was oppressive and unfair to the applicant.
5. The applicant therefore proposed mode of distribution of LR. THEGENGE/KARIA/1157 as follows:
 - a. Richard Mathenge & Milka Nyandia - 0.133 Ha jointly
 - b. James Rugara Wanjohi
 - c. Jackson Kariuki Wanjohi - 0.133 ha. jointly
 - d. Julia Wamaitha Thiriku
 - e. Jane Wanjiru Waihenya
 - f. Elizabeth Wambui Wanjohi - 0.133 ha.
6. The 2nd respondent in reply thereto filed an affidavit in which he deponed that the grant was confirmed with the full knowledge of the applicant and without any objection which grant has since been executed. It was further deponed that his interests in the suit land is the result of an exchange between himself and the 1st respondent as per agreement dated 31st May 2012.
7. The first respondent on 27th May 2014 filed a replying affidavit in which she deponed that originally LR THEGENGE/KARIA/1157 and 1159 were registered in the name of MURIITHI THUMBI to hold the same in trust of he deceased Wanjohi Muriithi and the 2nd Respondent JORAM KINGORI MURIITHI that when she got married to the deceased they were staying in LR THEGENGE/KARIA/1159 measuring ½ acres while the 2nd respondent was staying in LR THEGENGE/KARIA/1157 measuring one (1) acre.
8. It was deponed that the father of the deceased and the 2nd Respondent had wished that LR THEGENGE/KARIA/1159 be inherited by Wanjohi Muriithi and LR THEGENGE/KARIA/1157 by the 2nd respondent and that LR THEGENGE/KARIA/1157 was wrongly registered in the names of the deceased while LR THEGENGE/KARIA/1159 in the name of the 2nd respondent. That the total acreage of both land was 1½ acres and therefore each house was to get 0.75 acres.
9. It was deponed that it was not fair to distribute LR THEGENGE/KARIA/1157 since the 2nd respondent had been in occupation and had developed the same hence the exchange. Each of the three houses were to share 0.75 acres equally.
10. When the matter came up for hearing before me Mr. A. Kariuki appeared for the respondent while Jackson Kariuki Wanjohi as the 2nd applicant spoke on behalf of the applicant and stated that the 1st petitioner had subdivided the land to someone else the 2nd respondent who had his

own land and that the deceased land should have been divided to the three houses.

11.I must point out that based on the affidavit evidence herein this is a matter which ought to be determined by way of oral evidence as the court ought to establish whether the 2nd respondent is/was in actual occupation of LR THEGENGE/KARIA/1157 further there is need to establish whether the applicant consented to the application for confirmation of grant.

12.I therefore direct that the application be heard by way of oral evidence.

Dated, signed and delivered at Nyeri this 11th day of July 2014.

J. WAKIAGA

JUDGE

Court: The ruling is delivered in open court in the presence of the parties. The matter to be fixed for hearing at the registry on priority basis.

J. WAKIAGA

JUDGE

11/7/2014