

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 685 OF 1992

IN THE MATTER OF THE ESTATE OF CHEGE KABIRU – (DECEASED)

RULING

1. Peter Kabiru Chege died on 19th October 1989 at Nairobi at the age of 72.

2. Representation to his estate was sought by Teresia Wambui Kabiru and George Chege Kabiru, his widow and son, respectively, in a petition filed at the Kiambu Senior Resident Magistrate's Court succession cause number 222 of 1990. He is said to have died possessed of a parcel of land described as Githunguri/Gathangari/600.

3. Grant of letters of administration intestate was made to the petitioners on 8th March 1991.

4. The said grant was confirmed on 11th October 1991. According to the certificate of confirmation of grant of even date the only asset making up the estate, being Githunguri/Gathangari/600 was confirmed to Teresia Wambui Kabiru.

5. Thereafter the events moved from the Kiambu law courts to the High Court of Kenya at Nairobi after a Summons for Revocation was filed in this cause by Willy Nganga Chege and Felista Wairimu Warari. The said application was dated 10th June 1992. The said application was premised on three grounds:-

(a) that the applicants had not been informed when representation was sought;

(b) that Githunguri/Gathangari/600 belonged to the father of the applicant and the deceased and that the deceased held the same in trust for the applicant.

(c) that the deceased had died testate and had given clear instructions on how the estate was to be distributed.

6. The matter was initially referred to arbitration by elders. An award of the elders was returned and read to the parties but it was subsequently set aside by the court, which directed that the application be heard orally.

7. A hearing was conducted before Rawal J. Her Ladyship ruled on the matter on 23rd September 2008. She made the following orders:-

(a) that the revocation application was not merited and was dismissed;

(b) that the rightful survivors and heirs of the deceased were Teresia Wambui Kabiru, George Chege Kabiru and Virginia Wacheke Kabiru;

(c) that the estate of the deceased be shared out equally between Teresiah Wambui Kabiru and Virginia Wacheke Kabiru, with George Chege Kabiru taking the same share with his mother Teresia Wambui Kabiru, and that the administrators do apply for confirmation of the grant made on 8th March 1991 along the lines of (c) above.

8. The confirmation application was filed on 6th November 2009 and heard on 14th April 2010, when the grant was confirmed in the terms of the ruling of Rawal J. of 23rd September 2008.

9. The application that I am called upon to decide, dated 26th March 2012 should be read and understood against that background. It seeks orders that Felista Wairimu Kabiru vacates the property that was the subject of the succession cause. Originally, it was Githunguri/Gathangari/600 but following the implementation of the certificate of confirmation of grant dated 14th April 2009 it was split into Githunguri/Gathangari/3467 and 3468. It would appear that Felista Wairimu Kabiru has remained on the land after her objection was dismissed.

10. Upon being served, Felista Wairimu filed an affidavit sworn on 29th May 2012. She raises three issues:-

(a) that there is on record another application, dated 21st September 2010, which seeks similar orders;

(b) that the advocates filing the application did not serve them with notice of appointment nor of change of advocates; and

(c) that there is a pending appeal, evidenced by an annexed Notice of Appeal dated 6th October 2008.

11. It was directed on 30th July 2012 that the application be disposed of by way of written submissions. Three sets of written submissions were filed, that is on behalf of Teresia Wairimu Kabiru, Virginia Waceke Kabiru and Felista Wairimu Kabiru. Teresia

and Virginia basically argue that they are the persons entitled to these parcels of land following the confirmation of the grant, consequently Felista has no grounds for remaining in occupation. Felista's contention is that there is no basis for the application against her as the subject parcels of land do not form part of the estate as the court is now *functus officio* having accomplished its task of the distribution of the estate.

12. The critical role of the probate court is to manage the transition from the death of the holder of a property to its transmission to the heirs or survivors through distribution. Once the estate has been distributed and the property vested in its new proprietors, the probate court would thereafter have no further role in the matter. I agree with counsel for the respondent, that if issues arise after the property has vested in the new owners, as between the new owners and third parties then the remedy available to the new owners lies elsewhere, but not at the probate court.

13. I note from the record that Rawal J. decreed on 23rd September 2008 that the Githunguri/Gathangari/600 be shared out equally between Teresiah and Virginia. Thereafter a summons for confirmation of grant was determined on 14th April 2010 splitting the said parcel of land equally between Teresia and Virginia. A certificate of confirmation of grant was issued, which was implemented with the register for Githunguri/Gathangari/600 being closed and two new registers being opened with new numbers and new names of owners. The new registers are not in favour of the deceased, but of Teresia and Virginia. To that extent the property the subject of those registers does not form part of the estate of the deceased and this court has no jurisdiction at all over those parcels of land.

14. Githunguri/Gathangari/3467 and 3468 vest in Teresia and Virginia in their personal capacities. They do not hold them in trust. They can sue and be sued over them in their individual capacities. They can sue trespassers and third parties who are in illegal occupation of such parcels. Such suits

should not be filed at the probate court, but elsewhere.

15. In view of what I have stated above, I see no necessity to address the other arguments advanced by the respondent. The application dated 29th March 2012 is clearly unmerited. I hereby dismiss it with costs to the respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF DECEMBER, 2013.

W. M. MUSYOKA

JUDGE