



REPUBLIC OF KENYA

High Court at Nakuru

Succession Cause 452 of 2003

TERESIAH WANGARI.....APPLICANT

VERSUS

MONICAH WANJIRU KARANJA..... RESPONDENT

RULING

On 15th October, 2009, in Nakuru High Court Succession Cause No. 452 of 2003 this court, (Maraga, J, as he then was) held:

“..... the deceased's only asset, Title No. NYANDARUA/MAWINGO/335 comprising of 43.7 acres or thereabouts be shared equally among the thirteen units. That works out to 3.361 acres to each of the deceased's two widows and their respective children with, as I have said, the deceased's grandson, Anthony Mwangi, being considered as one of the children”.

On 5th November, 2010 the cited portion of the judgment of this court was amended, by consent of the parties, to read as follows:-

“..... the deceased's only asset, Title No. NYANDARUA/MAWINGO/335 comprising of 43.7 acres or thereabouts be shared equally among the twelve (12) units instead of thirteen units (six units from each house) with each taking 3.64 acres and a grant to be issued to that effect.”

Pursuant the said judgment the grant issued to the applicant was accordingly confirmed, with each of the twelve heirs of the estate receiving 3.64 acres as decreed by the court and agreed between the parties.

Notwithstanding the said judgment of the court, the agreement between the parties and the subsequent confirmation of the grant, the applicant contends that her children and herself have been denied access to their rightful share of the estate by the respondent and her children. Consequently, she has brought the instant application (the summons dated 9th March, 2011) under this court's inherent powers seeking the following orders:-

1. That the District Surveyor Nyandarua District be directed to subdivide the

parcel of land TITLE NO. NYANDARUA/MAWINGO/335 (hereinafter called "*the suit property*") in terms of the judgment herein;

2. That the production of the original title documents in respect of Monicah Wanjiru Karanja be dispensed with;

3. That the costs of the survey, subdivision and all other costs incidentals thereto including transfer and registration be shared equally between the two houses;

4. That the District Surveyor and his assistants as well as the applicant be

given police protection during the subdivision exercise and any other visits made to the land for purposes of enforcing the orders herein.

The application is supported by the affidavit of the applicant and is premised on the grounds that the applicant and her children have been prevented from taking their rightful share of the estate of the deceased by the respondent and her children who have been having full and exclusive control of the estate; that the act of the respondent is not only unfair to the applicant and her children but also unlawful; that unless the orders sought are granted the applicant and her children will continue being denied their rightful share of the estate.

The dispute herein relates to distribution and administration of the estate of Karanja Wagaya "*the deceased*" who died intestate on 15th April, 2003 leaving behind the suit property as the only asset. Following his demise, the applicant petitioned for a grant of representation of the estate of the deceased and the same was issued to her on 24th March, 2004.

On 8th September, 2004 the respondent applied for revocation of the grant issued to the applicant on the ground that the same was obtained fraudulently by a false representation that the applicant and her children were heirs of the deceased when in actual sense the applicant had been divorced and lived away from the deceased and that her children were born out of wedlock and therefore not heirs of the deceased. The respondent further contended that the petition was presented without her consent and that as the only wife of the deceased, only her and her six children were entitled to the grant and to inherit the suit property).

Upon considering the submissions of the respective parties in the dispute and the evidence presented before it the court held:

"Even if the deceased had divorced the petitioner or separated, the definition of a wife in section 3 of the Law of Succession Act, entitles her to inherit his estate. In the circumstances I find and hold that the petitioner and her children are entitled to share with the objector and her children the deceased's estate....."

From the record before me the foregoing judgment of this court was neither appealed from nor is there a stay of execution of the same.

Under **Section 47** of the **Law of Succession Act** this court has power, on application, to make such orders as may be expedient. It has power, also, to make such orders as may be necessary for ends of justice (**Rule 73** of the **Probate and Administration Rules**).

In the instant application, it is now nine (9) years since the deceased died and two (2) years since the grant issued to the applicant was confirmed.

The applicant has sworn an affidavit to the effect that she has been prevented from taking her rightful share of the deceased's estate by her co-wife and her children.

As the administrator of a portion of the suit property, to wit 3.64 acres of the suit property, the applicant has a right to administer her rightful share thereof. Her children too have a right to administer their respective shares.

The denial of access by the respondent is without any lawful cause or justification at all. I am also satisfied that in the interest of justice the suit property should be divided in accordance with the judgment of this court and the grant issued pursuant thereto to enable the parties to take their respective shares.

The upshot of the foregoing is that the application has merit and is allowed as prayed.

Dated and Signed at Nakuru this 18th day of January, 2013.

W. OUKO

JUDGE

Dated, Signed and Delivered at Nakuru this 5th day of February, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE



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