



REPUBLIC OF KENYA



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In re Estate of the Late Cyrus Njoroge Ng'ang'a (Deceased) (Succession Cause 360 of 2024) [2024] KEHC 12954 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 360 OF 2024
RN NYAKUNDI, J
OCTOBER 25, 2024
IN THE MATTER OF THE ESTATE OF THE
LATE CYRUS NJOROGE NG'ANG'A (DECEASED)**

BETWEEN

NAOMI NYAMBURA NJOROGE 1ST PETITIONER

SAMSON MWANGI NJOROGE 2ND PETITIONER

AND

MATHEW BROWN NZARA 1ST OBJECTOR

PETER WAINAINA THANDI (ON BEHALF OF MUTRITHIA SELF HELP GROUP) 2ND OBJECTOR

RULING

1. What is pending before this court is the distribution of the estate of the deceased. The brief history underlying this matter is that the Petitioners petitioned the court for grant of probate which was issued on 13/05/2006. The Grant was confirmed by Hon. Justice P. Mwilu (as she then was) on 30/11/2009. The parcel which is the subject of these proceedings was listed in the schedule under paragraph 17(F) as follows;

LR/779/382 – (5/2 & 3) measuring approximately 30 acres - Mutrithia Self Help Group (Whole)

2. The Petitioner filed an application dated 07/12/2005 seeking rectification of grant. By consent of the parties, they entered into a consent on 06/03/2017 where they agreed to amend the certificate of confirmation of grant as per the affidavit of Samson Mwangi Njoroge sworn on 13/02/2017. The rectified certificate confirmation of grant was then issued and at paragraph 17(F) it stated as follows;



Mutirithia Self Help Group (John Thande & Others) - LR/779/382 – (5/2 & 3) measuring 0.0106 Ha.

3. On 25/09/2019, Counsel Mathai applied for rectification of the Certificate of Grant of Confirmation to reflect that the parcel of land acreage in acres instead of 0.0106 Ha. However, when extracted, the grant erroneously omitted the name of John Thande & Others. The grant has never been rectified since then.
4. The protestors filed submissions dated 20/08/2024. Counsel for the protestors, who previously acted for the Petitioners, laid down the sequence of events regarding the rectification of grant through the pendency of the cause. He submitted that despite the grant being rectified, the petitioners declined to surrender the original certificate of title with respect to LR. No. 779/511, 779/512 and 779/513 which prompted the protestors to file the application dated 17/05/2023. The Application sought to have the protestors given the original titles to enable them carry out transmission. Counsel submitted that the petitioners gave the titles to Peter Wainaina Thande and Stephen Mbugua Thande who are not officials of the group.
5. Counsel submitted that when they held a status conference, the court established through the Petitioner that the protestor had purchased the parcel of land and the petitioner had the sale agreement in which the deceased had sold the land to the protestor. Further, that during a hearing in court, Emily Chepkechir, the Sub County development officer, testified that the Mutirithia Self Help Group was registered on 16/05/1989 under Registration No. UG/SS/REG/1434/89 and the current office bearer Joshua C Mwangi Chairperson, Joseph Kabucho Ruigu -Vice Chairperson, Paul Opija Imbila – Secretary, Patrick K Mungai – V. Secretary and Francis Peter Kuria – Treasurer. She stated that there was a dispute between Mutirithia Self Help Group and John Thande & Others which was registered in 2018. She stated that she never issued a new certificate but re-issued a new one after it emerged that the original had been lost. Further, that the self-help group renews its registration in compliance with section 14 of the Community Group Registration Act and that the cancellation of the registration of the group has never been effected.
6. Counsel submitted that during his testimony, the petitioner stated that the Self-Help Group purchased the land in question on 14/05/1991 from the deceased and they are the ones entitled to it but for some reason he preferred that some people be given titles yet they are not office bearers which the law does not allow. Further, that the current officials are the ones to be given the titles to transmit to members. He maintained that it is Mutirithia Self Help group which purchased the land and further, that there are office bearers currently who are entitled to conduct the affairs of the group on behalf of the members. It is his position that the court should order the petitioner to hand over the original titles.

Analysis & Determination

7. From the submissions and pleadings, it is clear that the issue for determination is;
Which Self-help Group is the rightful beneficiary of the estate?
8. From the evidence on record, it is evident that there was an agreement for sale between the deceased and Mutirithia self-help group. The sale agreement dated 14/08/1991 was for the suit parcel. From the rectified certificate of confirmation of grant which was confirmed on 30/11/2009 by Justice Mwilu (as she then was) the land was to be distributed to Mutirithia Self Help Group (John Thande & Others). Consequently, the certificate was rectified and a certificate of confirmation of grant issued on 06/05/2017 by Justice G. K Kimondo. A third rectification was sought to change the acreage to acres instead of hectares which was done. However, the name John Thande & Others was left out.



9. In order to determine which of the two groups is the correct one, as the protestor appears to be a group with the same name, the court sought to peruse the record and establish the evidence of registration.
10. There is an original certificate of registration, registration no. UG/22/REG/1454/89 on 16/05/1989 as evidence of its registration on record. Additionally, according to the record, there is a register under the same registration number with the management committee listed including one Josiah Mwangi as the chairperson. There is a second registration certificate for Mutirithia Self Help Group (John Thandi Family & Others) which indicates the date of registration as 18/07/2018.
11. The sub county social development officer filed a report on the registration of the Mutirithia Self help group dated 08/03/2022 where she confirmed that the first group was registered under registration no. UG/22/REG/1454/89 on 16/05/1989. Further, that the second group Mutirithia Self Help Group (John Thandi & Others) was registered on 18/07/2018 under the registration no. AINAB/REG/0223/2018. That it has been inactive and has not renewed annually as is required.
12. By virtue of the fact that the second group was registered on 2018, it is evident that it could not possibly be the group that purchased land from the deceased. The group led by the protestor is the rightful beneficiary as it was registered in 1989 and on a balance of probabilities, is the group that was included in the certificate of confirmation of grant.
13. It is therefore the finding of this court that the correct beneficiary is Mutirithia Self help group registered under registration No. UG/22/REG/1454/89 on May 16, 1989.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF OCTOBER 2024.

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R. NYAKUNDI
JUDGE

