



**In re Estate of Peter Siabiri Mabakhe & Andrew Kakai Siabiri (Deceased)
 (Succession Cause 124 of 1998 & 144 of 2016 & Miscellaneous Civil Application
 E003 of 2022 (Consolidated)) [2023] KEHC 21477 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21477 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT KITALE
 SUCCESSION CAUSE 124 OF 1998 & 144 OF 2016 & MISCELLANEOUS
 CIVIL APPLICATION E003 OF 2022 (CONSOLIDATED)**

AC MRIMA, J

JULY 31, 2023

**IN THE MATTER OF: THE ESTATE OF ANDREW KAKAI SIABIRI
 (DECEASED)**

BETWEEN

ANDREW KAKAI SABIRI PETITIONER

AND

BEATRICE NGAIRA OBJECTOR

**AS CONSOLIDATED WITH
 MISCELLANEOUS CIVIL APPLICATION E003 OF 2022**

BETWEEN

DIANA RACHEL KAVEDZA APPLICANT

AND

JOHN SABIRI WODIA RESPONDENT

**AS CONSOLIDATED WITH
 SUCCESSION CAUSE 144 OF 2016**

BETWEEN

JOHN SABIRI WODIA PETITIONER

AND



RULING

1. Before Court for determination are two applications. The first application is a Summons dated September 18, 1997 which was taken out by Andrew Kakai Sabiri, the Administrator of the Estate of Peter Siabiri Mabakhe. Andrew Kakai Sabiri was a son to the said Peter Siabiri Mabakhe.
2. The other application is a Summons for Revocation of Grant dated June 14, 2022 by Diana Rachel Kavedza, the Administratrix of the Estate of Beatrice Ngaira. Diana Rachel Kavedza was a daughter to Beatrice Nakhumicha Ngaira.
3. This ruling aims to settle this longstanding dispute which has spanned for over 20 years in the corridors of justice.

The Applications:

4. The Summons dated September 18, 1997 sought the following orders: -
 1. The purported registration of the said land is null and void and the same be registered in the name of Andrew Kakai Sabiri, the Administrator herein;
 2. Costs of this Application be provided for.
5. It was supported by the Affidavit of Andrew Kakai Sabiri (hereinafter referred to as 'Andrew') sworn on September 18, 1997.
6. The gravamen of Andrew's application was that the parcel of land known as Bungoma/Kamakoiwa/424 (hereinafter referred to as 'the land') belonged to Andrew's father one Peter Siabiri Mabakhe (hereinafter referred to as 'Peter') and that it was fraudulently registered in the name of Beatrice Nakhumicha Ngaira (hereinafter referred to as 'Beatrice').
7. The application was opposed by Diana Rachel Kavedza (hereinafter referred to as 'Diana') *vide* a Replying Affidavit sworn on November 29, 2022.
8. The Summons for Revocation of Grant dated June 14, 2022 was supported by the Affidavit of Diana which was evenly sworn.
9. It sought the following reliefs: -
 1. That this application be certified urgent and service thereof be dispensed with in the first instance.
 2. That pending the hearing and determination of this application and Kitale High Court Succession Cause No 124 Of 1998 (*beatrice Ngaira vs Andrew Kakai Sabiri*), an order does issue staying the orders of the Honourable CAS Mutai issued on the 2nd day of June 2018 in Bungoma Succession Cause No 144 of 2016 and all consequential orders therein.
 3. That pending the hearing and determination of this application and Kitale High Court Succession Cause No 124 Of 1998 (*beatrice Ngaira vs Andrew Kakai Sabiri*), this Honourable court be pleased to issue an order of injunction restraining the petitioner herein whether by himself, his agents, family members, nominees or any person acting under his behest from



subdividing, transferring, charging, alienating or in any matter whatsoever dealing with all that property known as Bungoma/kamakoiwa/424.

4. That pending the hearing and determination of this application and Kitale High Court Succession Cause No 124 Of 1998 (*beatrice Ngaira vs Andrew Kakai Sabiri*), this Honourable court be pleased to issue an order of inhibition prohibiting the Land Registrar, Bungoma from registering any mutation, subdivision, transfer, charge or lease or any conveyance whatsoever against all that property known as Bungoma/kamakoiwa/424.
5. That the Grant of Letters of Administration and the Certificate of Confirmation of Grant issued on the 2nd day of June 2018 in Bungoma Succession Cause No 144 of 2016 be annulled/revoked.
7. That costs of this application be provided for.
10. Diana contended that the Magistrates Court in Bungoma in Succession Cause No 144 of 2016 lacked the pecuniary jurisdiction over the matter and that the land was not free property of Andrew, hence, could not form the basis of the administration of the estate of Andrew.
11. She accused John Sabiri Wodia (hereinafter referred to as 'John') who is the Petitioner and Administrator of the Estate of Andrew in the said Bungoma Chief Magistrates Succession Cause No 144 of 2016 of concealment of material facts including the pendency of Kitale High Court Succession Cause No 124 of 1998 (formerly Kitale Senior Principal Magistrates Succession Cause No 10 of 1994).
12. Diana further flouted the proceedings as grossly defective.
13. Diana annexed several documents in a bid to demonstrate how Beatrice lawfully acquired the land.
14. The Summons for Revocation of Grant was, however, neither responded to nor opposed.
15. Parties were directed to file and exchange written submissions on the two applications. It was only Diana who complied. The submissions expounded on the position she took in respect of the two applications. Several decisions were also referred to in buttressing the said position.

Analysis:

16. This Court had wished to trace the background of this dispute. However, that was so well done by Hon Kimaru, J (as he then was) in a ruling which the Learned Judge delivered on July 25, 2022. As such, there is no need to attempt to re-invent the wheel.
17. Having carefully considered this matter and on perusal of the applications, the responses, the submissions and decisions referred to, a cardinal issue stands out such that if that issue is settled then that will determine the outcome of the two applications.
18. The issue is whether the land was the property of Peter as at the time he died on April 23, 1982.
19. To enable this Court unravel the history of the land, Diana, in her affidavit in support of the Summons for revocation, took the Court through that journey.
20. She deposed that Beatrice bought the land from Peter in 1976. By then the land was registered as Tongaren/Kamukuywa/424 which later changed to the instant Bungoma/Kamakoiwa/424
21. As at the time of the sale, Diana further deposed that the land was still registered under the Settlement Fund Trustees (hereinafter referred to as 'the SFT'). Diana exhibited copies of several documents to that end.



22. This Court has considered the documents. There is a Transfer dated September 30, 1976. It was between Peter and Beatrice on the sale of the land. The transfer was attested to by the SFT and the sale duly approved.
23. Armed with the approved transfer, Beatrice obtained the following other documents: -
 - i. A Letter of Consent from the Land Control Board at Tongaren.
 - ii. The minutes of the proceedings of the Land Control Board in which the consent was granted on October 27, 1976.
 - iii. Payment receipts from the Settlement Fund Trustees dated August 24, 1994 and September 16, 1994 respectively in respect of the loan repayment over the land in her favour.
 - iv. A Discharge of Charge from the SFT dated April 5, 1995.
 - v. A Title Deed for the land issued on March 27, 1996.
24. There was no dispute over the above documents and the narrations behind them.
25. Going by the said documentation, it is the position that the land was still registered with the SFT as at the time Peter died. Peter had to undertake several processes so as to discharge the land from SFT and eventually have it in his name. Peter, however, opted not to take that route. Instead, he decided to sale the land to Beatrice in 1976. That was 6 years before Peter died in 1982.
26. The transfer was duly accepted by the SFT and a Letter of Consent issued by the Lands Control Board.
27. Therefore, it is apparent that as at the time Peter died the land was not in his name and neither did Peter have any interest in that land having absolutely transferred it to Beatrice in 1976.
28. With such a position, then the land did not belong to Peter in 1982 when he died. The land could not, therefore, legally form part of the Estate of Peter. (See *In Re Estate of Alice Mumbua Mutua (Deceased)* (2017) eKLR).
29. The inclusion of the land in Kitale Senior Principal Magistrates Succession Cause No 10 of 1994 by Andrew as the Estate of Peter was, hence, in error and a misrepresentation of facts.
30. Since the land was not part of the estate of Peter, it was likewise not part of the estate of Andrew. Subsequently, the inclusion of the land in Bungoma Chief Magistrates Succession Cause No 144 of 2016 by John was grossly erroneous and unlawful.
31. Given that the land did not belong to Peter by the time he died, then the succession Courts in Kitale and Bungoma lacked any jurisdiction over that land. Whereas the administration of the estates of Peter and Andrew could lawfully be undertaken, such should not have included the land unless an Order of a Court of law reverted the land back to either Peter or Andrew as the case may have been.
32. There has been no Court order which was availed to this Court to that end. As a consequence, any orders made in the succession causes affecting the land are nullity and void ab initio. Likewise, any entries made over the land by the Lands officials on the basis of any orders issued by the succession Courts lack any legal legs to stand on.
33. Having said as much, this Court now believes that the foregoing is able to dispose of the two applications.



Dispositions:

34. As this Court comes to the end of this ruling, it hereby renders its unreserved apologies to the parties for the delay in delivery of this ruling. The delay, which was caused by misplacement of the Court files, is highly regretted. The parties' patience is appreciated.
35. Drawing from the foregoing, and given the protracted nature of this dispute and with a view to bring the matter to an end, this Court now hereby makes the following final orders: -
- a. The Summons dated September 18, 1997 is hereby dismissed.
 - b. The parcel of land known as Bungoma/Kamakoiwa/424 does not form part of the Estates of Peter Siabiri Mabakhe and Andrew Kakai Sabiri.
 - c. The parcel of land known as Bungoma/Kamakoiwa/424 shall forthwith be expunged from the Estates of Peter Siabiri Mabakhe and Andrew Kakai Sabiri.
 - d. The parcel of land known as Bungoma/Kamakoiwa/424 shall be restored to the name of Beatrice Nakhumicha Ngaira.
 - e. Any orders made in any of the succession causes herein affecting the registration of Bungoma/Kamakoiwa/424 in the name of Beatrice Nakhumicha Ngaira shall forthwith stand set-aside and expunged from the record and any entries made affecting the registration of Bungoma/Kamakoiwa/424 in the name of Beatrice Nakhumicha Ngaira shall be forthwith removed.
 - f. The estates of Peter Siabiri Mabakhe and Andrew Kakai Sabiri shall jointly and severally bear the costs of the proceedings incurred by the estate of Beatrice Nakhumicha Ngaira.

Those are the orders of this Court.

DELIVERED, DATED AND SIGNED AT KITALE THIS 31ST DAY OF JULY, 2023.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

No appearance for Miss. Munialo and Mr. Mutunga, Learned Counsel for the Estate of Beatrice Nakhumicha Ngaira.

No appearance for the Estates of Peter Siabiri Mabakhe and Andrew Kakai Sabiri.

Regina/Chemutai – Court Assistants.

