



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Nuru Kinoti Ali alias Nooru Nuru Ali (Deceased) (Succession Cause 384 of 2002) [2022] KEHC 15895 (KLR) (21 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 384 OF 2002
TW CHERERE, J
NOVEMBER 21, 2022**

BETWEEN

HASSAN NURU PETITIONER

AND

ZAINABU MWARI 1ST RESPONDENT

JACOB KINOTI NURU 2ND RESPONDENT

SALIMA NURU 3RD RESPONDENT

IDRIS NURU 4TH RESPONDENT

ABDI NURU 5TH RESPONDENT

YASMIN KENDI NURU 6TH RESPONDENT

AND

MAGIRI RINKANYA APPLICANT

ELIAS GITARI MAGIRI APPLICANT

JAMES KARANI MAGIRI APPLICANT

RULING

1. Nuru Kinoti Ali alias Nooru Nuru Ali (Deceased) died sometimes on 20th June, 1998. The court record reveals that Letters of Administration to the estate of the deceased in this matter were issued to the Hassan Nuru (Petitioner) on 26th February, 2003. The estate was later distributed in terms of a Certificate of Confirmation of Grant dated 18th December, 2003.



2. Subsequently by a notice of motion dated 20th March, 2015, Jacob Kinoti Nuru and Idris Nuru (the 2nd and 4th Interested Parties respectively) applied for revocation of the grant and by an order dated 01st March, 2018, the court made the following orders:
 - i. Letters of grant made in Succession Cause No. 384 of 2002 (this cause) are revoked and/or annulled and any transaction arising therefrom are void ab initio
 - ii. Orders of inhibition to remain in force in LR. No. Ntima/ntakira/ 1802, 1803, and 1808 as well as LR. Kionyo 859
 - iii. The court appoints Salima Nuru and Idris Nuru as joint administrators in Succession Cause No. 384 of 2002 (this cause). The two administrators should file application for confirmation of grant immediately but not later than 21 days from today's date. Respondent shall bear the costs of this application.
3. Subsequently, the administrators complained to the Land Registrar that their mother Mariam Nuru had fraudulently transferred deceased's land parcel LR. Abogeta/U-Kithangari/859 to herself and had afterwards caused the same to be subdivided into land parcel No. LR. Abogeta/U-Kithangari/1468, Abogeta/U-Kithangari/2756 and 2757 which were on 20th December, 2001 transferred and titles issued to Magiri Rinkanya, Elias Gitari Magiri and James Karani Magiri (1st, 2nd and 3rd Caveators/ Applicants respectively).
4. Arising from the complaint, titles to land parcel Nos. LR. Abogeta/U-Kithangari/1468, Abogeta/U-Kithangari/2756 and 2757 were cancelled and reverted to the original land parcel LR. Abogeta/U-Kithangari/859. Deceased's estate comprising of land parcel numbers LR. Ntima/Ntakira/1802, 1803 and LR. Abogeta/U-Kithangari/859 were subsequently distributed to deceased's estate's beneficiaries by a Certificate of Confirmation of Grant issued on 16th October, 2018.

Summons

5. The cancellation of titles to land parcel Nos. LR. Abogeta/U-Kithangari/1468, Abogeta/U-Kithangari/2756 and 2757 prompted the 1st, 2nd and 3rd Caveators/ Applicants to move this court by summons dated 01st April, 2019 seeking that:
 1.spent
 2.spent
 3.spent
 4.spent
 5. The honourable Court be pleased to review, vary and/or vacate its order dated 19th November, 2018 directing the cancellation of subdivisions of LR. Abogeta/U-Kithangari/859 and order that the titles to. LR. Abogeta/U-Kithangari/1468, Abogeta/U-Kithangari/2756 and 2757 be reinstated and the same revert to the names of the 1st, 2nd and 3rd Caveators/ Applicants respectively and that the order be effected by the Land Registrar Meru
 6. Costs of the Application be provided for

Caveators/applicants' Case

6. The Caveators/Applicants' case is contained in three affidavits sworn on 01st April, 2018 by the 1st, 2nd and 3rd Caveators/ Applicants respectively and to the affidavits are annexed copies of titles deed for LR.



Abogeta/U-Kithangari/1468, Abogeta/U-Kithangari/2756 and 2757 issued to them respectively on 20th December, 2001. To the 1st caveator/Applicant further affidavit sworn on 14th October, 2019 is a decree dated 03rd December, 2001 in Meru HCCC NO. 2001 by which deceased's wife Mariam Nuru and the Petitioner herein were directed to transfer 3 acres of LR. Abogeta/U-Kithangari/859 to the 1st Caveator/Applicant.

Respondent's case

7. The Respondent's case is contained in the statement filed on 14th July 2021 by deceased's daughter and 1st Administrator of deceased's estate Salima Nuru (who is also the 3rd Interested Party/Respondent) and her oral evidence tendered on 04th May, 2022. It is the Respondents' case that deceased's wife who is the Respondents' mother, Mariam Nuru purported to sell to the Applicants deceased's land LR. Abogeta/U-Kithangari/859 without first obtaining letters of administration prompting the Respondents who are children of the deceased to move the court to cancel the titles which it did by a judgment dated 01st March, 2018. The Respondents argue that their mother did not have a god title that could be passed to the Applicants.

Analysis and determination

8. I have considered the summons dated 01st April, 2019 in the light of the affidavits, witness statements, exhibits, submissions and authorities filed on behalf of the parties.
9. In this instant application, the Caveators/Applicants' claim is for title to, and occupation of land arising out of subdivisions of LR. Abogeta/U-Kithangari/859 and sale of the subdivisions thereof. Sale of land often involves subdivision or partition of land for sharing between several individuals, and that has something to do with boundaries, transfers, registrations, among others. The [Law of Succession Act](#) and the [Probate and Administration Rules](#) do not deal with such processes. These are, instead, regulated and governed by the [Land Registration Act](#) and the [Land Act](#). So subdivision, partition, survey, boundaries, maps, transfers, registrations, etc., are dealt with in the context of land legislation, and not succession legislation. The [Land Registration Act](#) deals with these at Parts II, III and IX. The Land Act, on the other hand, deals with them at Part V. (See [In re Estate of Daniel Khasievera Anusu \(Deceased\)](#) [2022] eKLR)
10. The two pieces of land legislation, that is to say the [Land Registration Act](#) and the [Land Act](#), are specific, that any disputes, actions or suits relating to matters governed or regulated by the two, are to be resolved by the Environment and Land Court. Indeed, the Land Registration Act and the Land Act provide that "court," for the purposes of the two Acts or within their contexts, means the Environment and Land Court.
11. The Environment and Land Court is a statutory creation by the [Constitution](#) of Kenya under the provision of Article 162 (b). From the preamble of the ELC Act, the jurisdiction of the court is defined as ".....a Superior court to hear and determine disputes relating to the environment and the use and occupation of, and the titles to, land and to make provisions for its jurisdiction functions and powers and for connected purposes.....".
12. In my considered view, the issue before the court is one on title to and occupation of the subdivisions of LR. Abogeta/U-Kithangari/859 and that places the cause of action squarely in the jurisdiction of the [Environment & Land Court Act](#) (ELC Act) and consequently the Environment & Land Court (ELC court).
13. By placing a dispute relating to title to and occupation of land before the probate court, Caveators/Applicants are asking the court to engage in matters that are beyond its jurisdiction.



14. From the foregoing, I have come to the conclusion that this court lacks the requisite jurisdiction to determine the Caveators/Applicants' claim for title to and occupation of land arising out of subdivisions of LR. Abogeta/U-Kithangari/859. I echo Nyarangi JA in the case of *The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited* (1989) KLR 1 that

“..... jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

15. In the end, I find that the Caveators/Applicants' summons dated 01st April, 2019 has no merit and it is dismissed with costs to the Respondents.

DATED AT MERU THIS 21ST DAY OF NOVEMBER 2022

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Caveators/Applicants - Mr. Kiruai for Kiautha Arithi & Co. Advocates

For Respondents - Mr. Mutuma for Mutuma & Koskei Advocates

