



IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 18 OF 2001

(CORAM: CHERERE-J)

IN THE MATTER OF THE ESTATE OF STEPHEN KIRIMA SILAS (DECEASED)

IN THE MATTER OF AN APPLICATION FOR REVIEW

BETWEEN

SHADRACK KOOME M'NCHEBERE.....APPLICANT

AND

MURITHI R.M.W. STEPHEN.....PETITIONER/RESPONDENT

GRACE CATHERINE NTINYARI.....1ST OBJECTOR/RESPONDENT

LILIAN KARIMI STEPHEN.....2ND OBJECTOR/RESPONDENT

ROSELINE MAKENA MUTWIRI.....3RD OBJECTOR/RESPONDENT

RULING

1. By summons dated 09th October, 2020 filed on even date, **SHADRACK KOOME M'NCHEBERE** (*Applicant*) seeks the following orders:

1. To be enjoined as an interested party

2. Preservation of LR. NYAKI/GIAKI/1759 and particularly all that land previously known as LR. NYAKI/GIAKI/2663 and LR. NYAKI/GIAKI/2648

3. Review of the court order dated 19th October, 2020

4. Restoration and restitution of LR. NYAKI/GIAKI/2663 and LR. NYAKI/GIAKI/2648

5. Stay of proceedings pending the hearing and determination of MERU CM EIC NO. 18 OF 2020

6. Any other order

7 Costs be provided for

2. The application is supported by the Applicant's supporting affidavit sworn on 09th October, 2020 mainly on the ground that he is an innocent purchaser of **LR. NYAKI/GIAKI/2663** and **LR. NYAKI/GIAKI/2648** since 2010, was lawfully registered as owner, has developed the properties which the Respondents have now unlawfully invaded and more importantly that his titles were impeached without affording him an opportunity to be heard. Annexed to the affidavit are title deeds for **LR. NYAKI/GIAKI/2663** and **LR. NYAKI/GIAKI/2648** issued to the Applicant on 29th July, 2010.

3. The summons is opposed on the basis of a replying affidavit sworn by **GRACE CATHERINE NTINYARI** (*1st Objector/Respondent*)

on her own behalf and on behalf of the 3rd to 5th Respondents. The Respondents contend that the Applicant is not a beneficiary of deceased's estate and his claim does not lie in a succession cause.

Analysis and Determination

4. By a ruling dated 17th October, 2019, this court revoked/annulled the Certificate of Confirmation issued to the Petitioner on 03rd July, 2002 on grounds among others that it was obtained fraudulently and that the Petitioner did not provide for his sisters (**Objectors**).

5. Additionally, the court directed that the assets previously registered in the name of the deceased, in this case being LR. NYAKI/GIAKI/1759 which had been subdivided to be reverted to the original title LR. NYAKI/GIAKI/1759 in the name of the deceased.

6. I have considered the summons in the light of the affidavits on record and submissions filed on behalf of the parties.

7. In my considered view, the main issue for determination is not whether the Applicant's titles were lawfully acquired but whether the Applicant ought to have been afforded an opportunity to be heard before the orders of 17th October, 2019, were issued.

8. The court record demonstrates that at the hearing of the application for revocation dated 11th March, 2019 filed on 12th March, 2019 and as at the time a ruling was delivered on 17th October, 2019, the parties disclosed to court that the deceased's estate had been sold out to the Applicant herein among others.

9. Article 50 (1) of the Constitution underscores the right to be heard and provides that:

(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

10. In **Msagha vs. Chief Justice & 7 Others Nairobi HCMCA no. 1062 of 2004 (Lessit, Wendo & Emukule, JJ on 3/11/06) (HCK) [2006] 2 KLR 553** it was held:

"The Court observes firstly that the rules of natural justice "*audi alteram partem*", hear the other party, and no man/woman may be condemned unheard, are deeply rooted in the English common law and have been transplanted by reason of colonialization of the globe during the hey-days of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision...It is paramount at this juncture that this court establishes the ingredients and/or components of natural justice. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material.

11. The order made on 17th October, 2019, no doubt adversely affected the rights and interests of the Applicant without affording him an opportunity to be heard thereby violating his right and expectancy to be heard.

12. I agree with **Chief Constable Pietermaritzburg vs. shim 1908 29 NLR 338 341** where the court held that:

"It is a principle of common law that no man shall be condemned unheard, and it would require very clear words in the statute to deprive a man of that right."

13. From the foregoing, I find that the Applicant's application has satisfied the threshold for review found in Section 8 of the Civil Procedure Act Cap 21 Laws of Kenya and Order 45 rule (1) of the Civil Procedure Rules.

14. Consequently, it is hereby ordered:

1. The orders made on 17th October, 2019 are reviewed and set aside with an order that LR. NYAKI/GIAKI/1759 be preserved pending further orders of the court

2. The Applicant is hereby enjoined as an interested party for the purpose only of participating in the application dated 11th March, 2019 seeking for revocation of the grant

3. Costs shall be in the cause

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Petitioner - N/A

For Applicant - N/A

For 2nd to 5th Respondents - N/A