



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 464 OF 2015

IN THE MATTER OF THE ESTATE OF GICHUNGE MUTUOTA (DECEASED)

BETWEEN

JAMES KINOTI THURANIRA.....APPLICANT

AND

SILAS KABURU THURANIRA.....1ST RESPONDENT

KENNETH MURIITHI M'THURANIRA.....2ND RESPONDENT

ONESMUS GITOBU.....3RD RESPONDENT

AND

IN THE MATTER OF AN APPLICATION FOR INJUNCTION

BETWEEN

SILAS KABURU THURANIRA.....APPLICANT

AND

JAMES KINOTI THURANIRA.....ADMINISTRATOR/RESPONDENT

RULING

Background

1. Gichunge Mutuota (*Deceased*) died sometimes on 10th April, 1978. His estate is comprised of the following assets:

i. LR. NO. ABOGETA/U-KIONGONE/123

ii. LR. NO. ABOGETA/U-KIONGONE/1263

2. Deceased was survived by his grandchildren namely:

1. Kimathi Thurania

2. Silas Kaburu

3. Stella Mugure

4. James Kinoti Thurania

5. Rosemary Gakii

6. Kenneth Muriithi

3. Letters of administration were issued to **James Kinoti Thuranira (Applicant)** on **06th October, 2015**. A **Certificate of Confirmation of Grant** was issued on **26th July, 2018** distributing the estate solely to the Applicant.

Summons

4. By summons dated 14th May, 2019, the Respondents applied to compel the Applicant to transfer 0.48 acres of LR. NO. ABOGETA/U-KIONGONE/123 to Silas Kaburu Thuranira and Kenneth Muriithi M'thuranira (*1st and 2nd Respondents*) respectively so that they could transfer it to Onesmus Gitobu (*3rd Respondent/Purchaser*).

5. By an order dated 23rd July, 2019, the court amended the Certificate of Confirmation of Grant was issued on 26th July, 2018 on the terms THAT:

1. LR. NO. ABOGETA/U-KIONGONE/123 be shared equally between James Kinoti Thuranira (*Applicant*); Silas Kaburu Thuranira and Kenneth Muriithi M'thuranira (*1st and 2nd Respondents*)

2. LR. NO. ABOGETA/U-KIONGONE/1263 be held by James Kinoti Thuranira (*Applicant*) on behalf of the children of Moses Kimathi (deceased) in equal shares

6. A green card for LR. NO. ABOGETA/U-KIONGONE/123 demonstrates that the Respondent ignored the court order issued on 23rd July, 2019 and on 08th April, 2019 caused LR. NO. ABOGETA/U-KIONGONE/123 to be subdivided into of LR. NO. ABOGETA/U-KIONGONE/4612 and 4613.

7. By summons dated and filed on 01st August, 2019, SILAS KABURU THURANIRA, (*the Applicant*) seeks orders THAT:

1. The Honourable Court be pleased to issue an order directing the cancellation of subdivision of LR. NO. ABOGETA/U-KIONGONE/123 into of LR. NO. ABOGETA/U-KIONGONE/4612 and 4613 and direct the Land Registrar, Meru, to rectify the record and restore the deceased's estate back to of LR. NO. ABOGETA/U-KIONGONE/123

2. Costs be provided for

8. The application is based mainly on the ground that the Respondent irregularly caused the transmission of deceased's estate to himself and has subdivided it into **LR. NO. ABOGETA/U-KIONGONE/123** into of **LR. NO. ABOGETA/U-KIONGONE/4612** and **4613** thereby disinheriting the Applicants.

9. The summons is further supported by an affidavit sworn by the Applicant on 01st August, 2019 in which he reiterates the grounds on the face of the application.

10. **JAMES KINOTI THURANIRA (Administrator/Respondent)** by his replying affidavit sworn on 14th October, 2019 contends that his siblings who include the Applicant benefited from their grandfather's estate in **MERU SUCCESSION CAUSE NO. 209 OF 2015**. He therefore urged that his father's estate in **LR. NO. ABOGETA/U-KIONGONE/123** and the trust created in **LR. NO. ABOGETA/U-KIONGONE/1263** be apportioned to him.

11. I have considered the application in the light of the affidavits and the submissions on record.

12. There is no dispute that the Respondent blatantly disregarded the court order on distribution issued on **23rd July, 2019 and on 08th April, 2019** caused **LR. NO. ABOGETA/U-KIONGONE/123** to be subdivided into of **LR. NO. ABOGETA/U-KIONGONE/4612** and **4613** both of which were registered in his name.

13. Court orders are not made in vain. The Court does not, and ought not to be seen to, make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people. (**See B vs. Attorney General [2004] 1 KLR 431**).

14. If the Respondent was dissatisfied with the court order, his remedy did not lie in disobeying the court order.

15. Being the administrator of deceased's estate, the Respondent has by his actions demonstrated that he cannot be trusted to faithfully administer the deceased's estate.

16. From the foregoing analysis, the orders which commends to me and which I hereby issue are that the summons dated and filed on 01st August, 2019 has merit and it is allowed in the following terms:

1. This Honourable Court hereby issues an order directing the cancellation of subdivision of LR. NO.

ABOGETA/U-KIONGONE/123 into of LR. NO. ABOGETA/U-KIONGONE/4612 and 4613

2. The Land Registrar, Meru is directed to rectify the record and restore the deceased's estate back to LR. NO. ABOGETA/U-KIONGONE/123
3. The Administrator/ Respondent is hereby granted 30 days from today's date to complete the administration of the deceased's estate in terms of Amended Certificate of Confirmation of Grant dated 23rd July, 2019
4. In default of compliance with order (3) above, the Deputy Registrar of this court is hereby empowered to sign the transfer forms on behalf of the Administrator/Respondent.
5. The order issued on 23rd July, 2019 appointing the Administrator/Respondent to hold LR. NO. ABOGETA/U-KIONGONE/1263 in trust for the children of Moses Kimathi (deceased) in equal shares is stayed pending determination of the names and ages of the children of the Moses Kimathi (deceased) so that the court can determine if a trust is necessary
6. Respondent is condemned to pay the costs of this application

Dated at Meru this 15th DAY OF April 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - M/s. Hiram Kirimi & Company Advocates

For Respondent - N/A