



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

MISC SUCCESSION APPL NO. 27 OF 2020

IN THE MATTER OF THE ESTATE OF FESTUS MUCHEKE NGARUNI (DECEASED)

IN THE MATTER OF AN APPLICATION FOR LETTERS OF ADMINISTRATION AD LITEM

BETWEEN

ANNE MARY KAGENDO MUCHEKE.....1ST APPLICANT

LUCY GATWIRI MUTHAIA.....2ND APPLICANT

AND

TIMOTHY MWITI MUCHEKE.....1ST RESPONDENT

PAUL MWITI MUCHEKE.....2ND RESPONDENT

RULING

Introduction

1. The parties herein are sons and daughters of Festus Mucheke Ngaruni (*Deceased*) who died sometimes on 01st June, 1969.
2. Deceased's estate comprised in **LR. IGOJI/KINORO/81** was on 18th February, 1977 transferred to the Respondents in equal shares.
3. A green card for **LR. IGOJI/KINORO/81** demonstrates that on 05.10.2015, the land was partitioned into **LR. IGOJI/KINORO/3561** registered in the name of 1st Respondent and **LR. IGOJI/KINORO/3561** registered in the name of 2nd Respondent.
4. Applicants contend that the transfer of deceased's land to the Respondent was fraudulent, disinherited them and by their Petition filed on 17th September, 2020 seek orders for grant of Letters of Administration Ad Litem to enable them to institute proceedings for revocations of the unlawful transfer to the Respondents.
5. 1st Respondent submits that the estate was distributed in terms of the Ameru Customary Law vide an undisclosed Succession Cause filed in Nkubu Court and that Applicants are guilty of laches and are disentitled to orders sought.
6. The 2nd Respondent supports the Applicants' application and concedes that the Applicants have been unlawfully disinherited.
7. Applicants dispute that the estate was distributed in terms of the Law of Succession vide an undisclosed Succession Cause filed in Nkubu Court as contended by the 1st Respondent.

Analysis and Determination

8. I have carefully considered the Petition in the light of the affidavits on record and submissions filed on behalf of the Applicants and the 1st Respondent.

9. In the case of Olympic Escort International Co. Ltd & 2 Others Vs. Parminder Singh Sandhen & Another (2009) eKLR, the Court of Appeal stated thus of a triable issue;

“It is trite that a triable issue is not necessarily one that the defendant would ultimately succeed on. It need only be bonafide.”

10. By their Petition, the Applicants have demonstrated a *prima facie* case and a legitimate expectation they were entitled to their father’s estate.

11. Whether or not the intended suit will succeed is a matter to be determined in the intended suit.

12. To determine the merits of Applicant’s intended suit at this interlocutory stage will in my considered view offend the rules of natural justice **“audi alteram partem”**, that no man/woman should be condemned unheard on merit.

13. 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.

14. From the foregoing, I am persuaded that the Applicants have a right to have their day in court. Consequently, the Petition filed on 17th September, 2020 has is allowed in the following terms:

1. Letters of Administration Ad Litem do issue to the Applicants to enable them to institute proceedings against the Respondents

2. Costs of this Application shall be in the cause.

DATED AT MERU THIS 27TH DAY OF MAY, 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - Ms. Wadegu Karanja Otunga & Associates Advocates

For 1st Respondent - Ms. Opiyo for Muga Kibanga & Co. Advocates

For 2nd Respondent - Ms. Akoth for Otto & Co. Advocates