



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 201 OF 1993

IN THE MATTER OF THE ESTATE OF JULIA KARAMBU M'RUKARIA (DECEASED)

IN THE MATTER OF AN APPLICATION TO BE ENJOINED AS INTERESTED PARTIES BY

PHINEAS GITONGA MURIITHI.....1ST APPLICANT

JOSEPH MWITI RINGINE.....2ND APPLICANT

JAMES KOOME GIDEON.....3RD APPLICANT

AND

IN THE MATTER BETWEEN

ROBERT RUKARIA MUGAMBI.....PETITIONER

AND

TABITHA KANUGU.....1ST OBJECTOR

JENIFFER NKIROTE.....2ND OBJECTOR

JOYCE NCURUBI.....3RD OBJECTOR

ELIZABETH MÍKIUGU.....4TH OBJECTOR

RULING

Introduction

1. **ROBERT RUKARIA MUGAMBI** obtained letters of administration to the estate of **JULIA KARAMBU M'RUKARIA (DECEASED)** on 10th June, 1994 and subsequently the grant was confirmed in his favour on 24th January, 1994 in the whole of deceased's estate comprised in **LR.NO. NKUENE/U-MIKUMBUNE/902**

2. By summons dated 10th May, 208 filed on 16th May, 2018, the Objectors who are daughters of deceased applied for revocation of the grant. The summons was allowed by an order dated 05th November, 2018.

3. Subsequently by a Certificate of Confirmation of grant dated 23rd September, 2019, deceased's estate comprised in **LR.NO. NKUENE/U-MIKUMBUNE/902** was distributed as follows:

1. Robert Rukaria Mugambi 5 acres

2. Tabitha Kanugu 1 acre

3. Jeniffer Nkirote 1 acre

4. Joyce Ncurubi 1 acre

5. Elizabeth Mikiugu 1 acre

4. By a summons dated 30th January, 2020, the Objectors seek orders that **LR.NO. NKUENE/U-MIKUMBUNE/1639** and **1640** which are subdivisions of **LR.NO. NKUENE/U-MIKUMBUNE/902** be reflected to reflect the name of the deceased to enable the estate to be distributed to the lawful dependants. The application is based on the ground mainly that deceased's estate has been subdivided into **LR.NO. NKUENE/U-MIKUMBUNE/1639** and **1640** making it difficult to distribute the estate as confirmed in the Certificate of Confirmation of Grant dated 23rd September, 2019.

5. Petitioner's response dated 02nd March, 2021 discloses that he had caused deceased's estate to be portioned as follows:

1. LR.NO. NKUENE/U-MIKUMBUNE/902 into LR.NO. NKUENE/U-MIKUMBUNE/1639 and 1640.

2. LR.NO. NKUENE/U-MIKUMBUNE/1640 into LR.NO. NKUENE/U-MIKUMBUNE/1910, 1911, 1912 and 1913.

3. LR.NO. NKUENE/U-MIKUMBUNE/1911 into LR.NO. NKUENE/ U-MIKUMBUNE/1942 and 1943.

4. LR.NO. NKUENE/U-MIKUMBUNE/1913 into LR.NO. NKUENE/ U-MIKUMBUNE/1983 to 1984.

6. Petitioner's affidavit and the Applicant's chamber summons dated 01st March, 2021 supported by an affidavit sworn by the 1st and 2nd Applicant's on 01st March, 2021 disclose that the Petitioner has disposed off part of the deceased's estate as follows:

1. LR.NO. NKUENE/U-MIKUMBUNE/1910 to PHINEAS GITONGA MURIITHI (1st Applicant) and JOSEPH MWITI RINGINE (2nd Applicant)

2. LR.NO. NKUENE/U-MIKUMBUNE/1983 to JAMES KOOME GIDEON (3rd Applicant)

7. 3rd Applicant's affidavit sworn on 01st March, 2021 discloses that the Petitioner sold to him **LR.NO. NKUENE/ U-MIKUMBUNE/1983** which is a subdivision of **LR.NO. NKUENE/U-MIKUMBUNE/1913** and certificate of title was issued to him on 18th March, 2019.

8. Applicants seek to be enjoined as Interested Parties to defend their titles.

9. By his Grounds of Opposition dated 05th May, 2021, the Petitioner opposes the application on the grounds that it is misconceived, bad in law, legally untenable, an abuse of the court process, an afterthought lacking in substance, unnecessary, vexatious, frivolous, designed to muddle issues and to unduly deny the beneficiaries of the estate a fair and just distribution of the estate.

10. The Objectors by an affidavit sworn by the 1st Objector on 22nd March, 2021 similarly oppose the application mainly on the ground that the Applicants are not beneficiaries and hence lack locus to file this application.

Analysis and Determination

11. I have carefully considered the summons in the light of the affidavits and submissions filed on behalf of the Applicants and Objectors.

12. It is not disputed that as at 05th November, 2018 when this court issued an order for revocation and reversion of **LR.NO. NKUENE/U-MIKUMBUNE/1639 and 1640** to the name of the deceased, **LR.NO. NKUENE/U-MIKUMBUNE/1640** did not exist the same having been partitioned by the Petitioner into **LR.NO. NKUENE/U-MIKUMBUNE/1910, 1911, 1912 and 1913** sometimes on 25th August, 2017 and **LR.NO. NKUENE/ U-MIKUMBUNE/1910** having sold to **PHINEAS GITONGA MURIITHI (1st Applicant) and JOSEPH MWITI RINGINE (2nd Applicant).**

13. It is also on record that in total disregard to the court order issued on 05th November, 2018, the Petitioner continued to dispose off deceased's estate and more particularly sold **LR.NO. NKUENE/ U-MIKUMBUNE/1983** which is a subdivision of **LR.NO. NKUENE/U-MIKUMBUNE/1913** to the 3rd Applicant.

14. The court record demonstrates that at the hearing of the application for revocation dated dated 10th May, 2018 and as at the time the court

issued the order of revocation dated 05th November, 2018 and subsequently issued a Certificate of Confirmation of Grant dated 23rd September, 2019, the Petitioner and the Objectors and more particularly the Petitioner did not disclose to court that part of deceased's estate had been sold out to the Applicants herein.

15. 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.

16. 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.

17. The orders made on 05th November, 2018 and 23rd September, 2019, no doubt adversely affected the rights and interests of the Applicants without affording them an opportunity to be heard thereby violating their right and expectancy to be heard.

18. From the foregoing, I am persuaded that the orders made on 05th November, 2018 and 23rd September, 2019 were obtain through suppression or misrepresentation of facts and non-disclosure of material facts which were within the knowledge of the Petitioner and which would have come to the knowledge of the Objectors had they exercised due diligence.

19. The objection by the Petitioner is particularly perplexing being the person that has muddled deceased's estate and yet wants to escape responsibility by audaciously dismissing the Applicants' application as misconceived, bad in law, legally untenable, an abuse of the court process, an afterthought lacking in substance, unnecessary, vexatious and frivolous.

20. Similarly, the fact that the Applicants are not beneficiaries of deceased's estate does not bar them from approaching the court for protection of their titles on the basis of sales that the Petitioner does not dispute. The Objectors' objection is therefore equally without merit.

21. I agree with the holding in 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."

22. Whether or not the Applicants will successfully defend their titles is not for determination at this stage. The most fundamental duty of the court at this juncture is to ensure that Applicants are not condemned unheard.

23. Consequently, it is hereby ordered:

1. The Applicants are hereby enjoined to this suit as Interested Parties for purposes of participating in the Objectors' summons dated 30th January, 2020

2. The orders dated 23rd September, 2019 distributing the deceased's estate to the Petitioner and the Objectors is hereby stayed pending the hearing and determination of the Objectors' summons dated 30th January, 2020

3. The Petitioner is directed to within 21 days from the date hereof file and serve green cards for LR.NO. NKUENE/U-MIKUMBUNE/902 and all the subdivisions thereof and search certificates in respect thereof disclosing the registered owners of each partition

4. The Objectors are hereby directed to serve the summons dated 30th January, 2020 on the Interested Parties

5. The Interested Parties shall have 21 days from date of service to file and serve their respective responses

6. Upon service of the Interested Parties' responses, each party shall have 21 days to file and serve their respective

submissions with the Objectors going first

7. In the interest of safeguarding the deceased's estate, orders of inhibition are hereby placed on each and every subdivision of deceased's estate comprised in LR.NO. NKUENE/U-MIKUMBUNE/902

8. Mention on 27th July, 2021 to confirm compliance with orders above and for further orders and/or directions

9. Costs of this summons shall be borne by the Petitioner

DATED AT MERU THIS 27TH DAY OF MAY,2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - N/A for Muchoma Law Advocates

For Petitioner - N/A for Kuria Karatu & Co. Advocates

For Objectors - Ms. Gikundi for Charles Kariuki & Kiome Associates Adv