



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 750 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE MICAH MIRERI OMARIBA (DECEASED)

MICHAEL KIBUCHI MWANGI.....APPLICANT

VERSUS

SAMMY OMARIBA.....1ST RESPONDENT

PERIS KEMUNTO MIRERI.....2ND RESPONDENT

RULING

1. The applicant filed a Chamber Summons application dated 22nd day of February 2021 seeking for the following orders;

a) THAT this Honourable Court be pleased to order that Plot No.15 be included in the partially confirmed grant as a property of the applicant herein. The same having been purchased by the applicant from the deceased herein.

b) Alternatively, the Deputy Registrar of this Court be empowered to execute all transfer documents for plot No.15, a sub-division of L.R No.4730/294 & 288 in favour of the Applicant.

2. The application is premised on grounds on the face of the record and the supporting affidavit of the applicant.

3. The applicant averred in his supporting affidavit that by his application dated 23.4.2018, the applicant SAMMY MIRERI OMARIBA applied for a partial confirmation of a grant issued by this court on the 6th day of May 2015. He also prayed for rectification of the grant to reflect the names of the purchasers of various parcels of land forming part of the estate of the deceased. The applicant in the instant suit was named as one of the beneficiaries owning one plot whereas he actually owns two plots on the larger parcel/estate of the deceased.

4. Sometimes on or about 5.11.2015, the applicant herein filed an application seeking to revoke the Grant of Letters of Administration issued to the Administrators of the Estate of the late Micah Mireri Omariba (deceased). The said application was compromised by Consent of all parties involved. The applicant then complied with the Consent Order on payments and the sum of Kshs. 1,300,000 was forwarded to the Counsel for the Administrators.

5. The applicant averred that he is therefore a beneficiary of the Estate plot No. 35 and 37 now plot No 15 and 17 and the summons for partial Confirmation of Grant ought to reflect as such. The administrators only seek to frustrate him and engage him in endless litigation where there is nothing left to litigate about. He urged the court to stop the mischief of the administrators since he does not owe them any balances on account of the two plots.

6. The 1st respondent filed a replying affidavit in reply to the applicant's averments on her own behalf and on behalf of the 2nd respondent and admitted to the applicant being in occupation of two plots which form part of Mireri Estate pursuant to sale agreement dated 26th October 2012. However, occupation on one plot is illegal as the applicant herein is yet to pay the full purchase price, hence has no right to the same.

7. The 1st respondent averred that the applicant failed to honour this court's order dated 26th September 2016 directing him to make payments of Kshs. 1,300,000 to the firm of J. Ndungu & Co Advocates within 14 days from 2nd March 2017. Hence the said order was rendered null and void.

8. In view of the foregoing, the applicant has beneficial interest to one plot as indicated in the partial confirmation of grant since the estate has not received the balance of the purchase price. The other parcel of Land should revert to the Estate of the late Micah Mireri Omariba and

this court should be pleased to order so.

9. Upon perusing the application together with the supporting rival affidavits the issue for determination is basically **Whether the applicant has beneficial interest in the two plots being plot No.35 and 37 now plot No 15 and 17 and therefore entitled to the orders.**

10. The fact that the two plots were purchased by the applicant herein is not disputed. What is disputed is the fact that the applicant has not made payments of the balance of Kshs. 1,300,000 after making an initial payment of Kshs. 2,000,000 upon execution of the agreement. The applicant has however averred that he made payments to the respondent's advocate vide cheques dated 18/08/2016 and attached to his supporting affidavit and marked as MKM II (a) and (b).

11. The respondent on the other hand contended that the estate has not received any payments from the applicant. The cheques amounting to Kshs. 1,300,000 was paid to the firm of J. Ndungu & Co Advocates vide cheques No. 392347 for Kshs. 650,000 and Cheque No.392348 worth Kshs. 650,000 all totalling to the ordered amount of Kshs. 1,300,000 as ordered by the Court. What is therefore remaining is for the respondents to add the name of the applicant Michael Kibuchi Mwangi to the list of beneficiaries in this cause as the owner of two plots namely Plot No 35 & 37 pursuant to the sale agreement dated 26th October 2012 and as per the orders in the said consent dated 26th September 2016.

12. It is therefore not true that the applicant did not pay for the last plot. If there are any issues surrounding the non-payments, then they should be addressed to the advocate who received the cheques and not the applicant. The objection by the respondent is a futile exercise seeing that it had already entered into a consent already on record.

13. In the premises this court finds merit in the application. The applicant is a beneficial owner of the two parcels of land and they should be included when distributing the deceased estate herein. In the event that the respondents fail to sign the transmission forms the Deputy Registrar of this court can be moved to execute the same.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD DAY OF SEPTEMBER 2021.

H .K .CHEMITEI.

JUDGE