



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

SUCCESSION CAUSE NO. 917 OF 2008

IN THE MATTER OF THE ESTATE OF HUMPREY RUBIA NG'ANG'A (DECEASED)

ALAN RUBIA NG'ANG'A.....APPLICANT

VERSUS

CATHERINE WANJIRU NG'ANG'A.....1ST RESPONDENT

AGNES MUTHONI NG'ANG'A.....2ND RESPONDENT

SAMMY MWIRIGI NG'ANG'A.....3RD RESPONDENT

NANCY WAMORO NG'ANG'A.....4TH RESPONDENT

EASTWORTH AGENCIES LIMITED.....INTERESTED PARTY

RULING

1. The deceased herein **Humphrey Rubia Ng'ang'a** died intestate on the 19th of September, 2003 and since then his estate has been dogged with one controversy after another. Initially and for several years the controversy was between the widow Nancy Wamoro Ng'ang'a as against her 4 step children. Now the controversy before court is between one son as against the widow and 3 of his siblings.

2. The deceased was survived by the following persons:

- a. Nancy Wamoro Ng'ang'a (widow)
- b. Agnes Muthoni Ng'ang'a (daughter)
- c. Alan Rubia Ng'ang'a (son)
- d. Sammy Mwirigi Ng'ang'a (son)
- e. Catherine Wanjiru Ng'anga (daughter)

3. Nancy Wamoro Ng'ang'a, Catherine Wanjiru Ng'ang'a, Agnes Muthoni Ng'ang'a and Sammy Mwirigi Ng'ang'a after a protracted case were appointed as administrators vide grant of letters of administration issued on 21st June, 2010.

4. By consent of the parties the distribution of the estate was done and a confirmed grant issued on the 4th of April 2011 which confirmed grant was rectified on 29th of March, 2013.

5. As has been the conduct of the parties distribution has not been easy, the beneficiaries disagreed on almost every aspect necessary in the exercise of transmission of the assets.

6. Such disagreement is what has necessitated the application subject matter of this ruling dated 22nd January, 2019 and brought by a beneficiary **Alan Rubia Ng'ang'a** pursuant to **Section 47 and 85 of the Law of Succession Act, Rules 49 and 73 of the Probate and Administration Rules** seeking to have the Registrar of Titles ordered to dispense with the signatures of the administrators, their photographs, and identification documents during the transmission process of L.R. No. 1159/41 from the estate to the applicant and to

accordingly issue a Certificate of Title. He also seeks costs of the application.

7. The application is predicated on grounds that the Respondents who are administrators have failed to conclude the distribution exercise yet the applicant had already had his portion of L.R.NO. 1159/41 sold to a third party; now the interested Party herein, he has had a deed plan registered and unless the transfer is effected legal action may be taken against him.

8. The 1st to 3rd Respondents objected to the application by way of an affidavit sworn by Agnes Muthoni Ng'ang'a the 2nd Respondent which affidavit is dated 29th July 2019. On her part the 4th Respondent objected to the same in her affidavit dated the 26th of July, 2019.

9. The gist of the objection is that the Applicant not being one of the administrators, and without informing the other beneficiaries nor obtaining their consent caused subdivision of L.R. No. 1159/41, incurred costs in excess of 2 million shillings, and engaged the County Government for approval to subdivide, all behind the back of the administrators,

10. Further, the acreage of the subplots is doubtful and the approval of the County Government contained 11 conditions as set out in a letter dated 24th September 2013 which conditions are yet to be fulfilled. The said Conditions were; -

- i. Application for water supply to each subplot to be made to the General Manager Nairobi City Water & Sewerage Company) and his condition for such supply be met.
- ii. The proposed cul-de-sac road serving the development to be constructed to adoptive standards including surface water drainage and street lightings plans and specifications to be submitted for approval by the City Engineer.
- iii. Vehicular access to subplots A, B & C to be from 12m co-de-sac road and to be sited and constructed to the satisfaction of the City Engineer.
- iv. Vehicular plot entrance to 20m road will not be permitted,
- v. 6x6 metre truncations to be provided at the junction with 20 m road.
- vi. A comprehensive surface water drainage scheme to be submitted and implemented to the satisfaction of the City Engineer.
- vii. Area of land coloured blue on the deposited plan to be surrendered to the Government free of cost.
- viii. Road alignment and surrender to be effected on the ground as per the approved subdivision scheme and in alignment with adjacent plots.
- ix. Survey plan showing surrender approved the director of survey to be attached before final approval.
- x. Construction of any building or boundary wall/hedge should not encroach on to road reserve.
- xi. Subject to the plot not constituting part of the disputed public/private utility land/allocation.

11. Further, the application to the County Government for the approval of the registration of the Applicant's portion was misleading as he indicated on the application that the same was necessary in order to fulfil the conditions which is not the case. Should the Applicant fail to construct the road the others will be unable to register their deed plans and not obtain their own titles.

12. From the history of this matter, the court's interaction with the parties in the conduct of the trial, and the pleadings before court, it is evident that there is unnecessary rivalry and mistrust amongst the parties. The court in an attempt to arrive at an amicable solution encouraged the parties to agree on a way forward including getting quotation for the works, and getting the parties to contributing towards the road development which appears to be the most expensive of the conditions to no avail.

13. In my considered opinion 8 years after confirmation of the grant distribution ought to have been concluded and one cannot fault the impatience of the Applicant that led to him selling his portion to meet his other needs.

14. On the other hand the other beneficiaries appear not to have ready finances to undertake the road construction this is not a strange scenario, and blame ought not to be apportioned on them either. Trust and compassion for one another is what is lacking.

15. The parties separately obtained quotations that varied to between 14 to 26 million for purposes of the road construction. The Applicant made an undertaking to pay on a pro rata basis his portion once the other beneficiaries are ready, this appeared unacceptable to the others.

16. It is my considered view also that to grant the prayers sought would be to circumvent the rules and regulation in place for registration of titles for an unreasonable cause as no viable reason for the same exists. Doing the best, I can, in the circumstance and ensuring justice is met for all the 5 beneficiaries caught up in this web I order and direct as follows:

- (a) The estimates the likely average cost of the road construction from presentations of the parties at Kshs.20,000,000 and apportions on pro rata basis to be paid by all the 5 parties a sum of Kshs.4,000,000 each.

(b) An interest earning account be opened in the names of the three law firms on record for the parties and the Applicant do deposit Kshs.4,000,000/= being his estimated share of the road construction.

(c) Upon payment of the said amount of Kshs.4,000,000/- the Administrators will sign within 14 days of such payment the relevant documents for transfer and avail all other necessary documents to facilitate transfer of the Applicant's portion to his name or his nominee.

(d) Upon further tabulation of costs herein the sum Kshs.2,143,500/= being the cost of subdivision or a sum to be agreed upon will be shared on pro rata basis amongst the beneficiaries and a refund made to the applicant.

(e) Any other cost incurred for purposes of the said subdivision will likewise be shared on pro rata basis.

17. Each party to bear their own costs.

Dated and Delivered in Nairobi on this 5TH day of MARCH, 2020.

ALI-ARONI

JUDGE