



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 305 OF 2008

IN THE MATTER OF THE ESTATE OF THURUAINI MWITARI ALIAS THIRWAINI MWITARI (DECEASED)

M'NABEA M'IMANYARA.....PETITIONER

LUDIA KAINDA.....PETITIONER

-VERSUS-

STANLEY BUNDI .

PAULINA NKURUGUCHU M'TWAMWARI.....APPLICANTS

AND

CHARITY J. M'NABEA.....LEGAL REPRESENTATIVE

AND

1. CHARLES MUGAMBI IKIARA

2. DANIEL KIRIINYA MUNENE

3. LEONARD NTEERE MUNENE

4. PETER KIRIINYA

5. RICHARD NDEREBA MUNENE

6. NICHOLAS KIINYA MUNENE

7. VIRGINIA KAIRUTHI MUNENE

8. NURU KITHINJI IGWETA

9. TIME U SACCO LIMITED.....INTERESTED PARTIES

PARTIAL RULING

Ascertaining estate property

1. I have thoughtfully pondered over the circumstances of this case. A real squirm emerges. First, the deceased was registered to two properties; LR. NYAKI/CHUGU/356 and LR. NYAKI/CHUGU/4. And all through these proceedings, these have been the estate property. Second, at all material times, M'Nabea Manyara was the registered owner of LR. NYAKI/CHUGU/234; and was named as one of the two beneficiaries of the estate of the deceased for being a purchaser and sole beneficiary of parcel No. 356. Third, now there is a claim that the deceased and M'Nabea exchanged their two lands, i.e. number 356 and 234 but the deceased died before perfecting the exchange. I have looked everywhere in these proceedings and I have not found any proof of or any agreement for exchange of land. Fourth, what I see is an agreement for sale of parcel number 356 between M'Nabea and Ludia dated 25th August 2005. Fifth, it appears that parcel number 356 and

234 were transferred to M’Nabea and Ludia respectively, in 2014. Number 234 was transferred directly to Ludia Kainda by M;Nabea. Number 356 was transferred to M’Nabea as a transmission from the estate. Sixth, the court is now being asked to do three critical things; (1) sanitise the alleged exchange between the deceased and M’Nabea; and (2) remove parcel number 356 from being estate property and confer its absolute ownership upon M’Nabea; and (3) make number 234 the estate property. Seventh, Ludia subdivided number 234 and some parcels were sold to third parties. Eighth, the third parties have challenged the entire approach adopted herein as number 234 was never the property of the deceased and swopping of the lands would gravely affect their rights.

2. From the official records, number 234 has never been registered to the deceased. These matters only makes this case to be scary-edge and difficult. Nonetheless, the court is experienced at dealing with such matters. However, as this is a succession matter, I need certain clarifications of facts by parties to enable me carry out my duty as a fully-informed court. Accordingly, I direct the applicants to provide evidence of the alleged exchange of land between the deceased and M’NABEA by filing and serving a comprehensive affidavit thereto together with documents in support thereof. This be done within 21 days. Other parties have leave to file replies to the said affidavit within time that I shall permit. Meanwhile, the ruling on the application for revocation of grant is arrested for now.

Dated, signed and delivered at Meru this 29th day of July 2020

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F. GIKONYO

JUDGE