



In re the Estate of the Late Miriam Gathoni Mwathi (Deceased) (Succession Cause 387 of 2010) [2020] KEHC 9220 (KLR) (Family) (30 November 2020) (Ruling)

Neutral citation: [2020] KEHC 9220 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 387 OF 2010

JO NYARANGI, J

NOVEMBER 30, 2020

**IN THE MATTER OF THE ESTATE OF THE LATE MIRIAM GATHONI
MWATHI (DECEASED)**

FRANCIS OLE SEMPELE.....INTERESTED PARTY/APPLICANT

VERSUS

FRANCIS WAMBAA KARANJA1ST OBJECTOR

PRISCILLA NJERI KARANJA2ND OBJECTOR

CLEMENT MWAURA GACHUNGA3RD OBJECTOR

LISE NJERI KAMAU.....4TH OBJECTOR

RULING

1. The deceased herein in respect of whom these proceedings relate died intestate on 22nd November, 1996. Subsequently, one Josephine Muthoni who claimed to be the only surviving child to the deceased petitioned for a grant of representation before Kiambu SRM court. Vide Kiambu SRMC Succession cause No 137/2008. The grant was subsequently issued and confirmed. The grant having been confirmed, the administrator proceeded to have the assets thereof registered in her name as the absolute owner.
2. Having registered the properties in her name, she proceeded to dispose some to various purchasers among them, George Ng'ang'a Mbugua who bought Dagoretti/Thogoto/1287, Paul Kinyanjui Kamau Dagoretti/Thogoto/1253, Francis Ole Sampele L.R. No. Dagoretti/Thogoto/1257 and Daniel Kanyi Mwathi L.R. Dagoretti/Thogoto/1256.
3. On 3rd March, 2010, Mary Wambui Karanja , Priscilla Njeri, Clement Mwaura Gachunga and Loise Njeri Kamau (herein after the objectors) filed before this court summons pursuant to Section 76 of the Law of Succession seeking revocation of the grant on grounds that the same was obtained fraudulently



- and through concealment from the court of material facts. They claimed that they were brothers and sisters to the deceased who were beneficiaries together with their siblings and their children but not the administrator one Josephine. That Josephine was not related to the deceased by blood considering that she had been accommodated by the deceased as a poor child (adopted child).
4. Subsequently, George Mbugua filed an interested party's affidavit sworn on 5th July 2010 claiming absolute proprietary rights as a bonafide purchaser for value and without knowledge that title L.R. Dagoretti/Thogoto/1287 was fraudulently acquired. Vide Summons dated 11th August, 2010, George sought to have his parcel of land expunged from the proceedings. In response, the objectors filed grounds of objection dated 22nd September 2010. Vide a Ruling delivered on 21st October 2011, the court declared that the claim against the interested party one George be struck out and L.R Dagoretti/Thogoto/1287 be expunged and removed from the proceedings.
 5. Subsequently, the objectors filed another application dated 9th May 2013 against the administrator and George Mbugua the interested party seeking the land registrar Kiambu to enter restrictions against properties known as Dagoretti /Thogoto T. 182, 1250, 1251, 1253, 1257, 1287 and Plot No Thogoto Market. Upon perusal of the application, the court allowed the application exparte on 10th May 2013 pending hearing and determination.
 6. Through a Notice of Motion dated 18th October, 2018 Daniel Kanyi Mwathi also sought an order that the restriction lodged on 17th January, 2014 in respect of L.R. Dagoretti /Thogoto /1256 be lifted by the Land Registrar Kiambu. Equally, Paul Kinyanjui filed Summons dated 3rd September 2018 seeking that the Objector's objection against him as the Interested Party and property No. Dagoretti/Thogoto/1253 be struck out in limine; that the said property be removed from the present proceedings and; that the Land Registrar Kiambu be ordered to remove restrictions entered against the said land.
 7. On 28th January 2015, the Court made orders in respect of the application dated 9th May, 2013 thereby setting aside the exparte orders made on 10th May, 2013. The Court further expunged L.R. Dagoretti/Thogoto/1287 from the proceedings and directed the Land Registrar to remove the restrictions registered against the property Dagoretti/Thogoto/1287.
 8. Following suit was Francis Ole Sempele also seeking to be enjoined as an interested party on account of being a purchaser for value in respect of L.R Dagoretti/Thogoto/1257. Vide his chamber summons dated 2nd December 2019, he also sought to have the orders made on 10th May, 2013 set aside and L.R. No. Dagoretti/Thogoto/1257 expunged from the proceedings and that the restriction registered against this property be removed. Subsequently, the application dated 2nd December, 2019 and that of 3rd September, 2018 were consolidated. Despite service of the applications and hearing notice served upon the Objectors, they did not respond nor appear for hearing.
 9. The gist of the application dated 3rd September, 2018 is that the Applicant one Paul Kinyanjui is the registered owner of the L.R Dagoretti/Thogoto/1253 having bought it from the registered owner one Josephine Muthoni the administrator. That he did due diligence to ascertain that the title was free from any encumbrances and that there was no notice of any fraud or illegality. That he has been in peaceful occupation with no interruption since 2009.
 10. He averred that the exparte restriction orders issued on 10th May 2013 were not served on him and that the orders were obtained without material disclosure.
 11. Concerning the application dated 2nd December 2019, Francis Ole Sampele averred that he bought the property No. Dagoretti/Thogoto/1257 from the registered owner one Miriam Gathoni Mwathi in 1993. That the said property was never the subject of Succession Cause in Kiambu Court hence its inclusion on the list of assets was erroneous.



12. During the hearing, the respondents/objectors did not attend Court.
From the record, there is nothing to show that the Objectors /Respondents ever filed any response. The applications dated 2nd December, 2019 and 3rd September, 2019 are basically not opposed.
Counsel representing the Applicants merely adopted the averments contained in the affidavits in support of their respective applications.
13. There is no dispute that there was an order of restriction issued on 10th May 2013 against various properties among them Dagoretti/Thogoto/1257 and 1253.
14. According to Mr. Sempele, he bought his L.R. Dagoretti/Thogoto/1257 from the deceased on 12th September, 1993 long before the deceased died. He attached a sale agreement and various payment acknowledgements signed by the deceased. He also attached a title deed issued on 13th January, 1998.
15. From the above evidence, it is clear that L.R. Dagoretti/Thogoto/1257 was sold by the deceased during her lifetime. There is no evidence to controvert this assertion. Had the court been given the correct information it would not have issued restriction orders against Dagoretti/Thogoto/1257. With this new evidence, review orders are inevitable. Accordingly, I am convinced that the application dated 2nd December, 2019 is merited and the same is allowed as prayed and that the restriction order issued on 10th May 2013 affecting L.R. Dagoretti/Thogoto/1257 is hereby set aside and the District Land Registrar Kiambu directed to lift and or remove the restriction entered against L.R. Dagoretti/Thogoto/1257.
16. Regarding the application dated 3rd September 2018, the same was not opposed. The Objectors have never bothered to prosecute the application for revocation nor their application giving rise to the restriction orders of 10th May, 2013. It is also not in dispute that the Applicant in respect of this application is the registered owner of L.R. Dagoretti/Thogoto/1253 duly transferred by a legally recognized administrator after having transferred the same into her name.
17. Pursuant to Section 93 of the Law of Succession, the Appellant is in possession of a valid title. There is no proof that he was aware of any illegality or fraud committed by the transferor (administrator).
18. By dint of Section 93 of the Law of Succession, the Applicant has legal title possession of which has not been challenged. Considering that the application has not been challenged, I am satisfied that the application is merited and the same is allowed as prayed. The restriction order issued against L.R. Dagoretti/Thogoto/1253 be and is hereby set aside and the Land Registrar directed to remove the same. Regarding costs each party shall bear their costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF NOVEMBER 2020

J. N. ONYIEGO

JUDGE

