



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 539 OF 2000

IN THE MATTER OF THE ESTATE OF THE LATE JOSPHAT MUNGAI THONGOTE (DECEASED)

FRANCIS MBUGUA MUNGAI

JOSEPH KARIUKI MUNGAI..... APPLICANTS

VERSUS

SAMUEL NDUNG'U MUNGAI

JAMES KAMAU MWANGI

MARGARET WANJIKU MUNGAI.....RESPONDENTS

RULING

1. The application before court is dated 3/9/2013. The prayers sought are;

1. THAT this Honourable Court be pleased to rectify the Grant herein dated 11th June, 2002 by substituting the applicants FRANCIS MBUGUA MUNGAI and JOSEPH KARIUKI MUNGAI in place of the administratrix PHYLIS WAITHIRA MUNGAI.

2. THAT this Honourable Court be pleased to set aside all subdivisions of the land originally known as Bahati Settlement Scheme plot number 57.

3. THAT the costs of this application be provided for.

2. The application is supported by the affidavit of Francis Mbugua Mungai and based on grounds;

a. THAT letters of administration in respect of the estate of the Deceased were issued to PHYLIS WAITHIRA MUNGAI as the administratrix and the same were confirmed on 11th June, 2002.

b. THAT after confirmation of the Grant, the administratrix embarked on subdividing the above land, which forms the estate of the deceased, in accordance with the Grant.

c. THAT the respondent and or their agents later had the land further subdivided in contravention of the Grant resulting in substantial injustice to other beneficiaries including the administratrix.

d. THAT subsequently, the administratrix passed in 2010 leaving the process of transfer through transmission incomplete.

e. THAT this application ought to be allowed so that the orders of the court vide the grant may be realized.

f. THAT in the interest of justice the court should grant the prayers herein.

3. The gist of the application is that letters of administration in respect of the estate of Joseph Mungai Kibe (deceased) were issued to Phylis Waithira Mungai and confirmed on 11/6/2002. The administrator embarked on subdividing the land known as Bahati Settlement Scheme

Plot Number 57 in accordance with the grant.

4. It is urged that the respondents and or their agents later had the land further subdivided in contravention of the grant. The administrator passed on in 2010 leaving the process of transmission incomplete. It is sought that the application herein be allowed to give effect to the orders of court vide the grant.

5. The application is opposed and in a replying affidavit Samuel Ndung'u Mungai states that before he died, the deceased had already subdivided plot number 57 and carried out all the necessary consents to effect sub-division.

6. It is urged that the deceased had even made a schedule of share of his properties to avert any understanding (sic). The schedule is annexed. The proposals made were agreed upon by all beneficiaries and each was vested with their own individual portions.

7. Samuel depones further that the deceased added him a portion of land on the basis that it is him who made payments towards discharging the loan that had been taken out to acquire the property.

8. Samuel urges that the application herein is laced with bad faith as during the succession proceedings, he was not involved both in the proceedings and subsequent confirmation of grant in the names of Phylis Waithira Mungai.

9. He adds that the land was subdivided way before the demise of the deceased and the proposed subdivision as per the grant was in conflict with that which was on the ground.

10. Samuel states that being the eldest son he was also entitled to administration of the estate.

11. By consent of the parties Francis Mbugua Mungai and Samuel Ndung'u Mungai were appointed joint administrators in place of Phylis Waithira Mungai.

12. The parties subsequently attempted to settle the matter but this did not bear fruit.

13. At the hearing, both parties relied on their respective pleadings and affidavits.

14. I have had regard to the application, the supporting affidavit and the replying affidavit.

15. Of determination is whether all the subdivisions of the land originally known as Bahati Settlement Scheme plot number 57 should be set aside. The issue of rectification of grant to substitute the administrator having been settled by consent.

16. It is common ground that there is in place a confirmed grant in respect of the estate of Josphat Mungai Thongote. In the Certificate of Confirmation of Grant dated 11th June, 2002 specific orders were given on the respective shares of each of the beneficiaries.

17. Those orders have not been varied, stayed or otherwise set aside through any of the established legal processes. They remain valid orders of court that must be enforced.

18. To the extent that other than the prayer for substitution of the administrator who is since deceased, the application seeks to enforce the orders of court. The subdivision of the property constituting the estate must conform to the orders of court on specific shares.

19. I note that Samuel Ndung'u Mungai has raised a plethora of issues justifying a particular mode of subdivision. Those were matters that ought to have been raised in the succession cause. Any subdivision that is contrary to the specific order on the sharing out of the estate to the beneficiaries is a nullity.

20. With the result that the application dated 3/9/2013 is allowed and I make the following orders;

1. Samuel Ndung'u Mungai and Francis Mbugua Mungai be and are hereby appointed joint administrators of the estate of Josephat Mungai Thongote.

2. Samuel Ndung'u Mungai and Francis Mbugua Mungai to proceed and complete the administration of the estate in respect of all the matters other than continuing trusts strictly in compliance with the certificate of confirmed grant and to produce before this court a full and accurate account of the completed administration within 6 months hereof.

3. Each administrator is enjoined to cooperate in all necessary processes and particularly in execution of any necessary document and in default either party be at liberty to apply to have the Deputy Registrar execute such documents.

4. Each party is to bear its own costs.

Dated and Signed at Nakuru this 26th day of February, 2019.

A. K. NDUNG'U

JUDGE