



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 278 of 2000

IN THE MATTER OF THE ESATE OF M'IBUATHU M'ILULA(DECEASED)

MARGARET CIOMAU M'IBUATHU....2ND ADMINISTRATOR/APPLICANT

-VS-

JOEL MITHIKA M'IBUATHU.....1ST ADMINISTRATOR/RESPONDENT

RULING

1. The Application before me is dated 10th April 2018 and is expressed to be brought under section 47 of the Law of Succession Act and Rules 49 & 73 of the Probate and Administration Rules. The Applicant seeks the following Orders;

a. That the Registration of the 1st Administrator Joel Mithika M' Ibuathu as the Sole Proprietor of the deceased L.R. No. Njia-Buri-E-Ruri/976, 2161, 2497, Plot No 563 Akiriangondu Land Adjudication Section and Plot No. 17A Muringere Market be cancelled and revert into the name of M'ibuathu M'imula to facilitate distribution as per Court Orders dated 19.03.2014.

b. That the Honourable Court be pleased to Order the LAND Registrar Meru North to dispense with the Production of title deeds issued to Joel Mithiga M' Ibuathu before cancellation of his registration of subdivision of M'Ibathu M' Imula land parcels as ordered by the court.

2. The Applicant in her supporting affidavit avers that she has not been able to get ½ of the estate issued to her as per the judgment dated 31.10.2007 and consequential Orders issued on 19.03.14 empowering her to sign alone all the necessary documents to administer and transfer the estate. She attached copies of the search records for L.R. Nos. Njia-Buri-E-Ruri/976, 2161, 2497 that show that the same were transferred to Joel Mithika M' Ibuathu and titles issued on 20.3.2002.

3. The petitioner herein answered the applicant and stated that the parcel No. 17A Muringure Market was never registered in the name of the deceased, but the same was a gift from the deceased to her mother Rael Koolo M' Ibuatha who then transferred it to him. He attached an extract of the minutes from Igembe South Sub County confirming the same. He also averred that he has never prevented the applicant from enjoying the share of the deceased estate.

Determination

4. On 31st October 2007 Lenaola J. (as he then was) distributed the estate of the deceased as proposed in the 2nd Administrators application dated 17.10.2006, to wit, equal sharing of the estate of the deceased between the 1st and 2nd Administrator. A certificate of confirmation was issued on 19th March 2014 specifying the estate properties and distribution thereof. The said grant herein is in situ.

5. Plot No. 17A market is listed in the confirmed grant as one of the estate properties to be shared equally between the two administrators. It ought therefore to be subdivided equally amongst the 1st and 2nd Administrator. In that case, the averment that the said plot was gifted by the deceased to his mother does not hold sway. From the history of this case, the 1st administrator is bent at disinheriting the 2nd administrator-the widow of the deceased. Perhaps he is still swimming in festering waters of patriarchy.

6. As a matter of law, administration of estate of the deceased should be completed within reasonable period. The law has placed it at 6 months after the grant is confirmed. See section 83 of the Law of Succession Act. But the administration of this estate seems to be taking unduly long due to maneuvers by the 1st administrator in the hopes that one day he shall take the entire estate. Notably, the 2nd administrator has not reaped the benefit of the judgment of court. Now therefore, in order to bring to an end the maneuvers by the 1st administrator herein, I allow the application before me and more specifically order:-

a. That the Registration of the 1st Administrator Joel Mithika M' Ibuathu as the sole Proprietor of the estate property namely L.R. Nos. Njia-Buri-E-Ruri/976, 2161, 2497, Plot No 563 Akiriangondu Land Adjudication Section and Plot No. 17A Muringere Market shall be cancelled and the properties shall revert back into the name of the deceased M'ibuathu M'imula to facilitate distribution of the estate as per Court Orders dated 19.03.2014.

c. That the land Registrar Meru North to dispense with the Production of title deeds issued to Joel Mithiga M' Ibuathu in respect of the estate properties and shall effect the cancellation I have ordered immediately and restore the lands into the name of the deceased.

d. The land Registrar herein shall give effect to the grant herein as is without any delay whatsoever and shall file a report in 30 days to confirm the grant has been given effect in the register of land.

e. The 1st administrator shall pay costs of the application given his conduct in these proceedings.

Dated signed and delivered at Meru in open court this 19th day of February, 2019

.....

F. GIKONYO

JUDGE

In presence of

Kimathi for Mburugu for objector

Kithinji for Soy for petitioner

.....

F. GIKONYO

JUDGE