



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.76 OF 2004

IN THE MATTER OF THE ESTATE OF M'NGARUTHI MUTANYANI (DECEASED)

JOSEPH MARETE NGARUTHI.....APPLICANT

VS

JOSPHAT KABWI.....1ST PETITIONER/RESPONDENT

JOHN MUNENE NGARUTHI.....2ND PETITIONER/RESPONDENT

MUNGANIA NGARUTHI.....3RD PETITIONER/RESPONDENT

AND

FRANCIS MWITA MUGAMBI.....1ST PROTESTER

PETER MUTHEE.....2ND PROTESTER

RULING

1. Application dated 28th November 2018 was brought under certificate of urgency seeking Peter Muthee/Nchebere be joined in this cause as an interested party and that stay orders be issued to orders made on 6th December 2017 pending hearing and determination of the application.
2. It was also sought that the court sets aside vacates, rescind and/go vary the orders issued on 6th December 2017 and issue a declaration that plot No. 11 Muthara Market does not form part of the estate of M'Ngaruthi Mutanyani – the deceased herein anymore.
3. The application was supported by the affidavit of Peter Muthee M'Nchebere in which he said that the plot herein was transferred to him and the late Derius Rukunga after they bought it from John Munee Ngaruthi – Deceased who was registered as the proprietor and who was the son of the deceased in this cause. It was averred that the entire family of the deceased met and agreed to sell the plot to enable them get necessary money to finance other cases touching on the estate of the deceased and his children.
4. It was averred that Joseph Marete Ngaruthi obtained orders issued on 6.12.2017 by deception and issuing the orders to seek to on it the applicant from the said property and was threatened to demolish the shops on the plot and yet there is no order for demolition. It was averred that Joseph Marete Ngaruthi failed to disclose that plot no. 11 Muthara Market was transferred and was not part of the estate of the deceased.
5. It was averred that Joseph Marete Ngaruthi failed to disclose to the court that plot No. 11 was transferred to John Munee Ngaruthi with consent of all beneficiaries.
6. Applicant said orders were granted before he was given an opportunity to be heard and that his propriety rights have been affected. That unless orders issued on 6.12.2017 are vacated, set aside and/or rescinded his rights and the rights of the estate of Derius Rukunga will be infringed and violated.
7. Joseph Marete Ngaruthi respondent to the application vide a Replying affidavit sworn on 3rd May 2019 and said the contents of the applicant/Interested parties affidavit are false and intended to mislead the court. It was averred that the plot No. 11 Muthara market belonged to the deceased and he didn't sell it. He said John Munene Ngaruthi, now deceased has never been the owner of plot No. 11 Muthara Market;
8. That John munene Ngaruthi didn't have the authority to transact on plot No. 11 as is alleged by the Interested party and it was not true

that the beneficiaries agreed to sell the said plot as alleged or at all and their allegations are made in bond faith and are intended to mislead the court. The Respondents said that purported minutes annexed and marked PMM-01 – are a forgery and should be rejected.

9. Respondent further averred that the documents annexed to the application are a clear indication that the applicant and John Munene Ngaruthi fraudulently colluded to intermeddle with the property of the deceased herein and fraudulently transferred plot no. 11 to the Interested party illegally.

10. It was further said that the Interested party is in illegal occupation of the deceased property and his application should be dismissed. Certificate of death No. B 561349 issued on 22nd day of February 2002 shows the deceased died on 16th April 1974 long before the purported date. It was agreed that plot No. 11 Muthara Market should be disposed to the intended interested party as per alleged minutes annexed as PMM-02 dated 14th May 2011.

11. The order made on 6th December 2017 speaks for itself. Application dated 9th May 2017 was allowed for reasons that the Administrators had since 6th July 2004 never applied for confirmation of grant and John Munene Ngaruthi one of the Administrators had also since died. Joseph Marete Ngaruthi was therefore made the new Administrator and the estate is yet to be distributed upon the said Joseph Marete filing fresh summons for confirmation or adopting the one dated 18th April 2006. This court had wanted all beneficiaries to attend court but it appears that had not been needed. The applicant herein can't be allowed to join this cause because he is not a beneficiary and he purports to have bought the plot from John Munene Ngaruthi and yet the plot was not in the name of the said John Munene Ngaruthi. The application is dismissed with costs as John Munene Ngaruthi didn't have authority of the court to dispose of the estate property. Applicant to pay costs of the application dated 28.11.2018 to petitioner.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 19TH DAY OF JUNE 2019.

In the presence of :

C/A: Kinoti

Applicant: - Mr Kitheka Advocate for applicant - present

Ms Narangwi Advocate for Interested Party – No appearance.

Mwanzia for Petitioners – No appearance

Mr Manjau Advocate for protester – No appearance.

Order

Joseph Marete Ngaruthi to file summons for confirmation and serve within 14 days on all beneficiaries and their advocates upon service of summons parties who are not agreeable to file protests by 25.7.2019 when directions will be taken. Copy of ruling to be supplied upon payment of copying charges.

HON A. ONG'INJO

JUDGE