



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 333 OF 2008

IN THE MATTER OF THE ESTATE OF JAMES FLAVIAN CHEGE MUNENE ALIAS JAMES

MUNENE ALIAS JAMES MUNENE CHEGE ALIAS JAMES CHEGE MUNENE (DECEASED)

KANTABEN RAMNIKLAL NAKER.....APPLICANT

VERSUS

LIBEY NJOKI MUNENE.....1ST RESPONDENT

JAMES CHEGE MUNENE.....2ND RESPONDENT

RULING

1. Land parcel LR No. 503 (original No. 378/2) Section V Mainland North, Mombasa Miritini is registered in the name of Sealine Limited. This is since 2nd September 2013. It was sold to the company on 19th April 2013 by the respondents Libey Njoki Munene and James Chege Munene for Kshs.90,000,000/= which was paid. The respondents were the widow and son, respectively, of the late James Flavian Chege Munene who died on 23rd December 2007 leaving a Will whose executors were the two and one Fackson Wainaina Kagwe. The late James Flavian Chege Munene was since 8th May 1975 the registered owner of the disputed land.

2. Upon the death of James Flavian Chege Munene the executors petitioned for grant of probate before this court. They obtained a grant which was confirmed on 25th March 2019. On 14th August 2013, at the request of the respondents, the grant was rectified to exclude Fackson Maina Kagwe as an executor, to amend the certificate of confirmation and include the disputed land in the list of assets of the deceased and to sanction the sale of the same to Sealine Limited.

3. The applicant Kantaben Ramniklal Naker is the widow of the deceased Ramniklal Manishanker Naker who died intestate on 10th April 1999. She obtained a grant in respect of the deceased on 6th December 2000. It was issued by this court. Her case was that the deceased and the late James Flavian Chege Munene were business partners who had jointly bought this disputed land which was registered in the name of the latter to hold in trust for the two in equal shares. This was agreed in writing in the partnership agreement. Each of the two was at liberty to sell or transfer his share in the disputed land to any person including the co-owner. Attempts to sell the property did not bear fruit. When the business relationship deteriorated, the deceased registered a caveat on the disputed land on 12th June 1998. The deceased died on 10th April 1999. The applicant obtained the grant which was confirmed on 26th June 2001 in which it was indicated that the deceased's interest in the land was to be vested in the applicant.

4. The applicant's case is that the caveat registered on the disputed land was, without her knowledge, fraudulently removed on the title which was, again without her knowledge, transferred to Sealine Limited.

5. The applicant's application dated 24th June 2019 seeks the revocation of the confirmed and rectified grant in respect of the estate of the late James Flavian Chege Munene issued to the respondents on the basis of fraud and concealment of material facts; to set aside, cancel and revoke all the transactions done on the title to the disputed land following the confirmation of the grant; and to transfer 50% of the dispute land to her.

6. In short, the applicant's claim regards the ownership of the disputed land. She claims that, although it was registered in the name of the

late James Flavian Chege Munene he held it in trust for himself and the deceased in equal shares. She claims that the sale to Sealine Limited was fraudulent; that she, as the administrator of the estate of the deceased, was entitled to half share of the disputed land. She is asking that the registration of the disputed land to Sealine Limited be cancelled.

7. I agree with the respondents that the dispute between the applicant, on one side, and the respondents and Sealine Limited, on the other side, belongs to the Environment and Land Court created under **Article 162(2)(b)** of the Constitution and **section 13** of the **Environment and Land Court Act, 2011**. This is the court that will determine the claim of the two estates in relation to the disputed land, determine the validity of the sale agreement between the respondents and Sealine Limited, determine whether the latter has acquired good title to the land, and whether the applicant as the administrator of the estate of the deceased is entitled to any proceeds in the sale of the land.

8. Consequently, on account of jurisdiction, I decline to hear and determine the application dated 24th June 2019 by the applicant. The application is struck out. However, owing to the outlined facts of this case, I ask each party to bear own costs.

DATED and DELIVERED at NAIROBI this 30TH OCTOBER 2019.

A.O. MUCHELULE

JUDGE