



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2374 OF 2003

IN THE MATTER OF THE ESTATE OF FRANCIS MWANGI NDUNG’U (DECEASED)

SHEET AND METAL WORKS CO. LTD.....APPLICANT

VERSUS

ROBERT MAINA MWANGI.....1ST RESPONDENT

NGINU POWER ENGINEERING (E.A.) LTD.....2ND RESPONDENT

RULING

1. The deceased Francis Mwangi Ndung’u died intestate on 20th March 2003. On 25th August 2003 his widow Jane Wanjiru Mwangi and his son Robert Maina Mwangi (1st respondent) petitioned the court for the grant of letters of administration intestate. This was done with the consent of Jackson Ndung’u Mwangi and Grace Wangari Mwangi who were the other children of the deceased. The grant was issued on 17th October 2003. The grant was confirmed and certificate of confirmation issued on 11th May 2004. The proceeds of Barclays Bank A/C No. [Particulars withheld] were ordered to go to Jane Wanjiru Mwangi absolutely. The following properties were ordered to be registered in the name of Jane Wanjiru Mwangi on her own behalf and on behalf of her children Robert Maina Mwangi, Jackson Ndungu Mwangi and Grace Wangari Mwangi in equal shares:-

- (a) Ruiru East/Juja East Block 2/1202;
- (b) Ruiru East/Juja East Block 2/1203;
- (c) Ruiru East/Juja East Block 4/T.1386;
- (d) Ruiru East/Juja East Block 4/T.1385;
- (e) Nairobi/Block 119/1797;
- (f) Nguirubi/Ndiuni/227;
- (g) LR No. 76/242 Thindigua;

(h) LR 76/596 Thindigua; and

(i) LR No. 76/79 Thindigua.

2. An application was subsequently successfully made to rectify the grant in which various other properties were included in the fresh certificate of confirmation that was issued on 7th July 2009. Jane Wanjiru Mwangi had died on 3rd December 005, and therefore the 1st respondent became the only administrator. The entire estate was now to be registered in the joint names of the three children of the deceased. Of significance, plot No. 326 – Kariobangi (also known as Plot No. 326 Kariobangi Light Industries) had been included in the list of the properties belonging to the estate of the deceased.

3. On 14th October 2011 another application for rectification of the certificate of confirmation was filed. This was occasioned by the death of Jackson Ndung’u Mwangi. It was sought that his widow Florence Katumbi Mwololo takes his place. The application was allowed on 30th November 2011.

4. On 9th September 2015 the applicant Sheet and Metal Works Ltd applied to remove Plot No. 326 – Kariobangi from the schedule of assets in the certificate of confirmation, and to declare the sale agreement dated 16th June 2008 between the 1st respondent and the 2nd respondent Nginu Power Engineering (EA) Ltd null and void as it had been done before the grant was confirmed. Anthony Gitiche Mbau is a director of the applicant. He swore a supporting affidavit to state that they bought the plot from one John Kimani who was the original allottee. The purchase was sanctioned by the Nairobi City Council which gave letter dated 12th March 1986. They took possession of the same. They paid the stand premium, survey fees and ground rent. The plot was surveyed and deed plan processed (“SAM 2”) in preparation of the title deed. On 23rd October 2014 John Kimani went to pay ground rent and to ask for the title deed but was surprised to be told that a third party had paid rates. He found that the third party was the 2nd respondent who claimed that the plot had been sold and transferred to it on 16th June 2008 by the 1st respondent, Grace Wangari Mwangi and Jackson Ndung’u Mwangi. On 10th November 2014 the Nairobi City Council wrote to the applicant to say that it had cancelled the transfer to the 2nd respondent and the plot reverted to it.

5. The 2nd respondent’s case was that on 7th October 2005 the administrators of the estate of the deceased leased the property to it to operate a business thereon. On 16th June 2008 the administrators sold the property to it. It faithfully paid rates under the name of the applicant company under whose name the account was registered. This continued till 2015. On 9th October 2013 the 2nd respondent was registered as the owner of the property.

6. On his part, the 1st respondent stated that the sale of the property by the administrators was sanctioned by all the three beneficiaries and therefore was valid. Secondly, it was his case that on 23rd July 1993 the applicant sold the property to one Joab Kamau Njoroge for Kshs,700,000/= vide an agreement duly signed by the company. On 23rd July 1993 the applicant wrote to the Nairobi City Council to say they had sold the property to Joab Kamau Njoroge and surrendered the allotment letter to enable issuance of a fresh letter of allotment to Joab Kamau Njoroge. On 26th May 1994 vide a sale agreement (“RMM6”) Joab Kamau Njoroge sold the property to the deceased. He stated, therefore, that the claim that the property belonged to the applicant was without a basis.

7. Counsel for the parties filed written submissions which I have considered, alongside the affidavits and annexures.

8. There is the question regarding who the original allottee of the plot was. Then the question whether it was the applicant or the deceased who became the owner of the property. Whether the property rightly belonged to the estate and whether the administrators of the estate of the deceased had capacity to sell it to the 2nd respondent are the other questions that will have to be answered.

9. It is therefore clear that the dispute is substantially over the ownership of the plot No. 326 Kariobangi. It is not a dispute about the identification of the beneficiaries of the estate of the deceased and the determination of their respective shares. As was submitted by counsel for the 2nd respondent, this dispute belongs to a court established under **Article 162(2)(b)** of the Constitution of Kenya 2010 and **section 13** of the **Environment and Land Act (Cap.12A)**. It is the Environment and Land Court that is the proper forum to resolve the dispute regarding the ownership of the property in question.

10. Indeed, there are proceedings between the parties over the property that are going on in the Environment and Land Court in **ELC No. 145 of 2014** at Nairobi.

11. Consequently, I stay these proceedings to allow the Environment and Land Court determine the question as to who rightly owns Plot No. 326 – Kariobangi.

DATED and DELIVERED at NAIROBI this 21ST February 2018.

A.O. MUCHELULE

JUDGE