



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2461 OF 2012

IN THE MATTER OF THE ESTATE OF FREDRICK MUHANDA MATHERI (DECEASED)

ONESMUS MATHERI NDEGWA.....1ST APPLICANT

ZACHARIA KURIA NDEGWA.....2ND APPLICANT

MATHERI KABUGUA.....3RD APPLICANT

FRANCIS MWANGI KABUGUA.....4TH APPLICANT

RACHEL WANJIRU KIMANI.....5TH APPLICANT

VERSUS

MATHEW MATHERI MUHANDA.....1ST RESPONDENT

PETER GATHUMBI MUHANDA.....2ND RESPONDENT

RULING

1. The deceased Fredrick Muhanda Matheri died intestate on 20th November 1988. A grant of letters of administration with regard to his estate was issued to Mathew Matheri Muhanda (1st respondent) on 15th November 2010 and confirmed on 21st July 2011. The consent for the confirmation of grant was signed by Peter Gathumbi Muhanda (the 2nd respondent) and Rachel Wanjiku Kimani (the 5th applicant). According to the certificate of confirmation of grant, 4.05 acres of Location3/Gacharage/104 was to be equally shared between the respondents while 1.65 acres was allocated to the 5th applicant. The 1st respondent was listed as the sole beneficiary of Mitumbiri/Wempa/Block1/1967.

2. On 12th October 2012, the 2nd respondent filed summons for revocation of grant on the grounds that the 1st respondent had not involved him or informed him about the succession proceedings despite him being a beneficiary of the estate; that the 1st respondent had awarded himself a larger share of the estate of the deceased; and that he had shared the estate with the 5th applicant who according to him was a stranger to the estate. The application was opposed by the 1st respondent through his replying affidavit dated 1st November 2012. The matter was later screened to be suitable for mediation and referred for mediation pursuant to the order of the court issued on 27th March 2017. The mediator filed her report dated 30th July 2017 stating that the mediation had been conducted between the parties and that parties had reached a settlement.

3. On 19th June 2017, the applicants brought the present application dated 31st May 2017 seeking to be enjoined in the suit as interested parties and seeking leave to file responses to summons for the revocation of grant dated 11th October 2012. They also sought for review of this court's orders made on 27th March 2017 referring the matter to mediation and for the court to give directions to facilitate the hearing of the summons for revocation. Their application was based on the grounds that:

a) the applicants are relatives of the respondents and they are entitled to portions of Location3/Gacharage/104, which measures 5.3 acres and which is registered in the name of the 1st respondent;

b) the Location3/Gacharage/104 was during the land consolidation in Muranga County of 1950s registered in the name of the deceased to hold 3.3 acres in trust for himself and his brothers Ndegwa Matheri, Kabugua Matheri and Kimani Matheri and 2.4 acres as self-acquired property;

c) the deceased's brothers Ndegwa Matheri, Kabugua Matheri and Kimani Matheri died before receiving their respective shares to the property and as such their children were entitled to receive the share of the deceased's estate that belonged to their fathers;

d) although the deceased in his lifetime recognized/admitted that he held 3.3 acres in trust for himself and his brothers in equal shares, he did not subdivide and/or issue certificates of title to his said brothers; and

e) the 1st respondent only recognized the 5th applicant as the widow of the late Kimani Matheri entitled to the said share of the land in Thika Chief Magistrate's court succession cause No.477 of 2010 but did not expressly admit or recognize the interests of the heirs of Ndegwa Matheri and Kabugua Matheri;

4. The application was supported by the affidavit of the 1st applicant dated 2nd June 2017. He stated that the deceased was one of the four sons of the late Matheri Ndegwa. The other sons were Ndegwa, Kabugua and Kimani. Ndegwa was survived by three children who included the 1st and 2nd applicants. The respondents are two of the children of the deceased. The 5th applicant is the widow of Kimani. According to the affidavit, during land consolidation the fathers of the 1st, 2nd, 3rd, and 4th applicants were in detention while the husband of the 5th applicant worked with the Department of Surveys. The deceased was registered in respect of Location3/Gacharage/104 in trust for himself and for the estate of his late father. His portion was 2.4 acres and his late father's portion was 3.3 acres. The applicants are laying a claim to the 3.3 acres that was held in trust by the deceased for their fathers. Their case is that the respondents knew this but did not disclose it at the filing of the petition and obtaining the grant. They seek to be joined in the proceedings to be able to make a claim on the estate, and to participate in the application to revoke the grant.

5. The application was not opposed.

6. The applicants filed written submissions which I have considered.

7. It is not in dispute that at the time of the deceased's death, Location3/Gacharage/104 was registered in his favour. The applicants allege that the property was held by the deceased in trust for himself and his brothers. The applicants therefore claim to have a legitimate interest in the proceedings which touch on a parcel that the deceased held in trust of their respective fathers.

8. It is notable that the court can, at any stage of the proceedings, upon application by either party or on its own motion, order the name of the person who ought to have been joined or whose presence before the court is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit, to be added or joined as a party (**Attorney General v Kenya Bureau of Standards & another [2018] eKLR**).

9. Because the applicants have laid a claim to parcel no. Location3/Gacharage/104 which they say was registered in the name of the deceased to hold in trust for their fathers, it is fair and just to reopen the matter as they did not participate in the mediation proceedings. This is the only way they can participate in the application for revocation.

10. Consequently, I review and set aside the order sending the matter to mediation, and the resultant mediation settlement agreement.

11. The applicants are hereby joined as 2nd to 6th applicants to the application for revocation dated 11th October 2012. They will have 14 days to file and serve responses to the application.

12. The matter shall be mentioned on 2nd July 2018 for directions on the hearing of the application for revocation.

DATED and DELIVERED at NAIROBI this 30th May, 2018.

A.O. MUCHELULE

JUDGE