



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1825 OF 2015
IN THE MATTER OF THE ESTATE OF MUNYINYI IGOGO (DECEASED)
R U L I N G

1. The Application before the Court arising from the Petition for Letters of Administration in the Estate of Munyinyi Igogo who died on 15th May 1968. The Petition was filed by the sons of the Deceased, James Waweru Munyinyi and Morris Nduranu Munyinyi. The Deceased died at Ndenderu Sub-Location Kiambu County and was living in Ruaka Location, Kihara Division Kiambu at the time of his death.

2. The Deceased was survived by the aforementioned sons and Edward Njenga Rire, a grandson. They are the only potential beneficiaries of the Estate. They are all Adults. The Deceased is said to have attained the age of 115 years. The existence of only 3 beneficiaries is confirmed by the Letter from the Chief of Ruaka Location dated 14th July 2015. There was no death certificate because at the time of death “Kiambu District was not a compulsory Registration area.”. The only asset listed in the Petition was L.R. KIAMBAA/RUAKA/221. The Deceased held a freehold interest in 3.84 hectares. The Petition was presented on 22nd July 2015. The Petition was advertised by Gazettment on 20th November 2015. The Letters of Administration were issued to James Waweru Munyinyi and Morris Nduranu Munyinyi on 4th January 2016. The Grant of Representation was confirmed by a Certificate of Confirmation of Grant pursuant to the Order of Hon Mr Justice Musyoka J on 16th September 2016. The sole asset was to be divided between the three surviving beneficiaries being James Waweru, Morris Ndaranu and Edward Njenga. They all agreed that the distribution should be such that Edward received 0.607 Hectares and James and Morris received 3.233 in equal shares. There may have been another sibling, David Igogo Munyinyi but he passed away on 16th June 2013, in other words before the Petition was filed. He was said to be the brother of James and Morris, and the Father of Andrew Munyinyi and Alan Mbugua. It seems Edward Njenga is the son of a sister, Tabitha Wambui. Although it is right that the Estate should be distributed between all the descendants the position is not entirely without hurdles.

3. No doubt because the administration of the Estate was taking such a long time various members of the Family registered various restrictions and cautions against the Property. The Certificate of Official Search informs the reader that the Property was acquired by the Deceased in 1956. In 1966 he was issued with the Title. On 4th August 1992 there was a Caution registered by David Igogo described as “purchaser”. On 9th September 1992 there was a restriction placed on any dealing in the Property until the Hearing and final Determination of Nairobi HHCA No 254 of 1992. On 2nd March 2002 there was a further restriction on dealings vide Ref LND/6/11/VOL XX/178 brb 31.8.2002”. On 28th May 2004 there was another restriction against dealings vide G M Muhori pursuant to a notice dated 20 May 2004 until succession matter App of 14 July 1972 is determined in Court. On 31.1.2012 a further Caution was

registered in favour of Andrew Munyinyi Rire and Mbugua Allan . The on n 26th April 2012 an Order of Temporary Injunction was registered restraining any transaction vide Court Order CC 108/04 of 23rd April 2012. And on 12 January 2015 there was a further restriction preventing any dealings vide the Assistant County Commissioner's Letter Reference No KBA/LND/6/4/VOLXVI/142 . By the said Letters the Assistant County Commissioner has asked the District Land Registrar to lift the restrictions to allow further dealings because the Parties had attended his offices and informed him that the matter had since been resolved. A search of the underlying file references has not at this stage produced any tangible results. Therefore the only information before the Court comes from the descendants of the Deceased.

4. The Administrators of the Deceased have file an Application on 20th January 2017. It seems an Order "THAT all the cautions, restrictions and prohibitions and orders lodged in the title of land reference no. Kiambaa/Ruaka/221 the subject property of the deceased herein be removed or lifted forthwith." Also that costs be in the cause.

5. The Beneficiaries attended before the Court on 6th February 2017. They were acting in person. They were James, Morris, Edward Njenga, Andrew Munyinyi and Alan Mbugua. The Parties informed the Court that they had resolved the dispute between themselves. The Court was informed that they had placed the cautions and restrictions against the title and they had now resolved the dispute so the cautions could be lifted as prayed in the Application. On that day the Court Ordered:

"The Caution upon LR No Kiambu/Ruaka/221 in favour of Edward Njenga, Andrew Munyinyi and Alan Mbugua is lifted by the Consent of the Parties."

The Order was extracted. The Applicants seem to be arguing, by way of correspondence that the Order was incorrectly extracted. It records that the Parties attended in person before the Court and were heard. That is the correct position. The Letter is written by James Waweru Muninyi, In it he states that "I have discovered that the order has got an error as the same reflects the removal of caution of the deceased parcel of land..... I had applied for the cautions including prohibitory orders and restrictions be lifted to facilitate the sub-division and transfer of the subject properties among the beneficiaries of the deceased estate.". The Honourable Deputy Registrar of the Division, being unable to detect any errors directed the Parties to mention the Matter before the Judge. It was so mentioned on 14th March 2017 when the Parties then amended their application to apply for ALL the cautions and restrictions to be lifted and that the property to be divided between the three surviving brother, that is, the sons of the Deceased.

6. The Court was to reconsider the application in light of the amendment. Such an informal procedure was considered to be in keeping with Article 159(2) of the Constitution in view of the age of the case, the age of the Parties and the issues at stake.

7. This Court takes the view that the only restrictions and/or cautions it can lift are those in favour of Edward Njenga, Alan and Andrew Munyinyi. They have confirmed that their dispute is resolved. In relation to the remaining cautions, in the absence of any evidence of how they came into existence and why, it is beyond the Court's jurisdiction to interfere with their continued existence. The Court was informed that David Igogo was a relative and his claim will be subsumed in the intended distribution. David Igogo is identified as a purchaser in 1992. Any purchase would have been suspect in the absence of a Certified Grant of Letters of Administration, therefore it may have been that he paid the purchase price but the land was not transferred. Without adequate evidence before the Court, the submissions made are speculative and insufficient to found any Orders.

8. The Order of 6th February 2017 stands unchanged.

9. However, the Court of its own motion has reviewed its decision in light of the complexity of this matter. The Court takes into account the age of this matter and the issues at stake. In accordance with the principles of access to justice and the High Court's inherent jurisdiction and responsibility to find a solution, the Court directs the Land Registry Kiambu to give Notice to all the beneficiaries of the

restrictions and/or cautions registered against the title of LR No Kiambu Ruaka/221 to show cause as to whether or not their caution and/or restriction should continue. Such Notices to be issued within 21 days of service of this Order and any show cause to be concluded in the following 90 days.

It is so Ordered,

FARAH S. M. AMIN

JUDGE

Dated, Delivered and signed on SIGNED AND DATED at NAIROBI this 27th day of April 2017 and reviewed on 31st May 2017

In the Presence of

Court Assistant: Patrick

Morris Ndirangu, Edward Njenga, and James Waweru Munyinyi