



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION MILIMANI LAW COURTS
SUCCESSION CAUSE 868 of 2010
IN THE MATTER OF THE ESTATE OF RODAH WANGARI MUNGOKORO

RULING

1. The Court now has before it a Summons for Rectification of Grant for the Estate of Rodah Wangari Mungokoro (“the Deceased”) who passed away on 1st September 2009. The Letters of Administration Intestate were issued on 29th October 2010 and confirmed on 26th July 2011. The Summons was filed on 14th March 2017.

2. The Application is brought by the sole Administrator to the Estate. The Summons contains two prayers as follows:

(a) “THAT the schedule to the confirmation of Grant and the schedule thereof issued by this Honourable court on 26/7/2011 be rectified and corrected to include one half (½) share of Nakuru Municipality Block 27/554.

(b) THAT this Honourable court does rectify the Grant and confirmation thereof and vest the one half (½) share of Nakuru Municipality Block 27/554 to JOHN KAHOTO NJOROGE in place of RODAH WANGARI MUGUOKORO

(c) THAT the costs of this application be provided for.

3. The Application is supported by the Affidavit of Eliab Gichohi Mugokoro on the grounds that the omission was erroneous and that the Certificate of Lease in respect of Land Reference Number Nakuru Municipality Block 27/554 was discovered after the confirmation of Grant. The Application is drafted by C W Ngala & Company Advocates. Ms CW Ngala is one of the beneficiaries too. The Beneficiaries have signed a “Consent” drafted in the following terms:

“We the undersigned dependants within the meaning of section 29 of the Law of Succession Act of the above-named children (or a person who might be beneficially entitled to participate in the estate of the above-named RODAH WANGARI MUGUOKORO (deceased) who died on 1/9/2009 do hereby consent to rectification of the confirmed Grant and schedule dated 26/7/2011. We also consent to the said half (½) share of NAKURU MUNICIPALITY BLOCK 27/554 be registered in the name of JOHN KAHOTO NJOROGE in the place of RODAH WANGARI MUGOKORO.”.
There then appears a list of the 7 Beneficiaries including the Administrator.

4. In the Supporting Affidavit, the Administrator explains that the family of the deceased assumed that the property had been sold and transferred to John Kahoto Njoroge. The Deceased had only an ½ share in the

property and that is what she sold. The Certificate of Lease shows that she acquired a Lease for a term of 99 years in the said land on 20th March 1997. She sold the Land by a Sale Agreement dated 8th August 2001. The Agreement was concise but clear. There were two covenants that the purchaser had to comply with, firstly to pay the sum of One hundred and sixty thousand shillings to the vendor, and secondly the purchaser was to effect the transfer of the title deed which is to be deposited with the advocates on execution of the Agreement. That was not done and the Beneficiaries simply assumed the sale was completed.

5. There is absolutely no evidence before the Court that the sale price was paid. Since the second covenant to transfer the land has not been complied with, there is no presumption that payment was made in full. Therefore, the prayer sought is not within the best interests of the Estate within the meaning ascribed in Section 70 and 71 of the Law of Succession Act.

6. The Application also asks the Court to “vest the one half in” in the Purchaser. Again, it is not the Court that vests but operation of law. In any event that will not cause registration of the title in the name of the purchaser.

7. Paragraph 6 of the Supporting Affidavit states that “all the seven (7) beneficiaries have consented that the schedule to the confirmation of grant be rectified/corrected to the extent that the said half ½ share of NAKURU MUNICIPALITY BLOCK 27/554 be included in the schedule and be vested to John Kahoto Njoroge. Notwithstanding the Consent. The Court cannot grant the Orders as sought. Vesting is by operation of law and has already taken place by the Purchaser occupying the land in question.

8. The Following provisions apply:

(a) Rule 43 of the Succession Rules which provides :

(1) Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued....”

(b) Section 74 of the Law of Succession, Cap 160, Laws of Kenya provides:

“74. Errors may be rectified by the Court

Errors in names and descriptions, or in setting fourth (sic) the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered or amended accordingly.”

Neither of those two provisions provide for instituting a new “beneficiary” into the schedule of distribution.

(c) Section 71 of the law of Succession, requires the Court to be satisfied; “(a) if it is satisfied that the grant was made rightly to the applicant and that he is administering and will administer the estate according to law... (b) if it is not so satisfied... Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled....”

A purchaser is not a beneficiary on intestacy.

9. The buyer is not a dependent or beneficiary of the Estate. He has to prove his entitlement to the Land. In the circumstances, the Court is not satisfied that it is in the best interests of the Estate to grant the Order as sought. Instead the Court does order that:

(1) The Certificate of Confirmation be Rectified to include the Land known as Land Reference Number NAKURU MUNICIPALITY BLOCK 27/554.

(2) As for distribution, the Land shall be distributed to the Administrator to complete the sale upon being satisfied that the FULL purchase price has been paid.

(3) The purchaser to pay the costs of the application, the transfer and registration as provided for in the Agreement of Sale.

Order accordingly,

FARAH S. M. AMIN

JUDGE

Signed and Delivered in Nairobi, this 25th day of April 2017

In the presence of Patrick – Court Clerk

Mrs Ngala – Applicant/Beneficiary