



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 13 OF 2010

CHARLES NDWIGA KANYERIA.....APPELLANT

VERSUS

AUGUSTINE MUTURI.....1ST RESPONDENT

MWANIKI MAIRANI.....2ND RESPONDENT

R U L I N G

1. This is a ruling on two applications dated 11/08/2016 and 7/09/2016. The two applications were heard together for the reason that they were supported by similar facts.
2. The first application was brought by Charles Ndwiga Kanyeria hereinafter referred to as the applicant while the second one was brought by Augustine Muturi and Mwaniki Mairani referred to as the respondents in this ruling.
3. The first application seeks for orders for stay of execution of grant in this matter pending the hearing and determination of the intended application in the Court of Appeal Nyeri (Nyr No. 4 of 2013) filed against the judgment of Ong'udi, J. delivered on 18/12/2012. This application is supported by the affidavit of Charles N. Kanyeria in which he states that he was dissatisfied with the judgment and therefore commenced proceedings in the Court of Appeal at Nyeri. It is therefore necessary for this court to issue orders for stay against the respondent in respect of LR. No. Kyeni/Mufu/4207, 4208, 4209, 4210 and 4211.
4. The application was opposed by the respondent on grounds that there is no appeal pending in the Court of Appeal at Nyeri since the application said to be pending was dismissed. It was stated that the applicant wants to delay the execution of the grant to prevent the respondent from enjoying the fruits of the judgment which awarded them shares in their late father's estate in the year 2012.
5. I have perused the record of the court and the annexures by both parties. It is apparent that the applicant filed an application dated 18/03/2013 in Court of Appeal at Nyeri No. 4 of 2013 seeking for extension of time to file an appeal against the judgment of Ong'udi, J. delivered on 18/12/2012. In the ruling of Kiage, J.A. delivered on 31/07/2015 the application was dismissed for lack of merit. This being the position, there is no pending appeal or application before the Court of Appeal at Nyeri. Indeed, the applicant admits that there are no proceedings pending in the Court of Appeal where he uses the words "intended application" in the main prayer.
6. It follows that this court cannot issue orders in vain. The applicant has brought many unsuccessful applications before the court among them the application dated 5/08/2013 seeking to review the judgment of Ong'udi, J. which was dismissed.
7. I find that this application lacks merit and it is hereby dismissed.
8. The second application is supported by the affidavit of Augustine Muturi Mairani and it seeks for the following orders:-
 - (a) That the Land Registrar Embu be ordered to include the name of Augustine Muturi Mairani, Anthony Nyaga Mairani and John Njagi Mairani in the register for LR. Kyeni/Mufu/4210.
 - (b) That the Land Registrar Embu be ordered to issue a title deed in the joint names of Augustine Muturi Mairani, Anthony Nyaga Mairani and John Njagi Mairani.
9. It is deposed that L.R. No. Kyeni/Mufu/4210 was decreed to the three respondents in the grant issued by Ong'udi, J. on 18/12/2012. By fraudulent means, the applicant Charles N. Kanyeria colluded with the Land Registrar Embu and obtained the registration of the land in his name. The respondents have paid the requisite fees but the Land Registrar has refused to register the land in their names. The land is now in danger of being disposed of by the applicant.

10. The application was opposed by Charles N. Kanyeria on grounds that he has appealed against the decision that redistributed the estate and that he is yet to be heard by the Court of Appeal.

11. The cause was originally filed at Runyenjes court in Succession Cause No. 26 of 2009 in which the estate of the deceased Mairani Kanyeria. The applicant was dissatisfied with the decision and thereby lodged this appeal No. 13 of 2010. The Honourable Judge set aside the judgment for lack of jurisdiction on the part of the magistrate. The distribution was done afresh but the particulars and the beneficiaries did not change.

12. It is this judgment of Ong'udi, J. that aggrieved the applicant in this case and against which he intends to appeal.

13. Considering the facts and the history of this cause, it appears that the applicant is never satisfied with any decision made by any of the court in this matter. The grant of Ong'udi, J. distributed parcel No. L.R. Kyeni/Mufu/4210 to be shared equally by the following:-

- a. Augustine Muturi Mairani
- b. Anthony Nyaga Mairani
- c. John Njagi Mairani
- d. Charles Ndwiga Mairani

14. At the time of distribution, the land was in the name of the deceased Mairani Kanyeria. Subsequently, the land was registered in the sole name of the applicant Charles Ndwiga Kanyeria. It is correct that the applicant fraudulently obtained registration in his name contrary to the grant issued in this appeal. It is therefore necessary that the orders sought be issued in conformity with the grant. The grant remains valid and should be implemented in the absence of any orders to the contrary.

15. The prayer of the respondents is that their names be included in the register as co-owners of LR. No. Kyeni/Mufu/4210 alongside the respondent Charles Ndwiga Kanyeria.

16. I find the application meritorious and I hereby allow it as prayed.

17. Each party to meet their own costs for the two applications.

DELIVERED, DATED AND SIGNED AT EMBU THIS 3RD DAY OF AUGUST, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Dulu for Wairimu for respondents

Appellant present