



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CIVIL APPLICATION NO. 29 OF 2001

DIONISIUS MATHEW NJERU.....1ST APPLICANT

DOROTHY WANJIRA NYAGA.....2ND APPLICANT

KENNEDY NJAGI NGARI.....3RD APPLICANT

BENJAMIN NJUE4TH APPLICANT

GATAVI NGARI.....5TH APPLICANT

VERSUS

DAVID NJERU NGARI.....RESPONDENT

RULING

1. The applicants in the summons dated 16/08/2016 seek for orders for an injunction against the respondents, their servants, agents or anyone claiming through them to be restrained from entering upon, taking possession of, surveying, sub-dividing, selling transferring, alienating, charging or in any way interfering with the deceased's estate specifically L.R. Nos. Ngandori/Kiriari/5574, 6885, 6886, 6887, 6888 and 6889 resulting from sub-division of L.R. No. Ngandori/Kiriari/1591 pending hearing of the summons for revocation.

2. The application is grounded on the affidavit of the 1st applicant Dionisius Mathew Njeru. He deposes that the 2nd and 5th applicants are the children of the deceased and are therefore beneficiaries of the estate. It is contended that the respondent is a stranger to the estate. That the respondent's mother Jedida Ruguru Ngari filed Embu succession Cause No.117 of 1993 secretly and thereafter the respondent caused L.R. No. 1591 to be registered in his name illegally and irregularly. Thereafter he sub-divided the land into L.R. Ngandori/Kiriari/5574, 6885, 6886, 6887, 6888 and 6889 some of which were transferred to 3rd parties.

3. The applicants claim to be in occupation of L.R. Ngandori/Kiriari/1591 which they have extensively developed and that despite the sub-division on paper, there are no beacons on the ground. The applicants are therefore apprehensive that their land may be sold leading to serious loss and thus the prayer for injunction.

4. The respondent opposes this application relying on his replying affidavit deposes that the applicants and himself are children of the deceased who had two wives. The applicants are children of the first wife Prisca Marigu while the respondent is the child of the 2nd wife Jedidah Ruguru. He denies the allegation that succession case No. 117 was filed secretly without informing the applicants.

5. The succession cause was filed following the due process and the deceased's land L.R. Ngandori/Kiriari/1591 shared between the two families in equal shares. L.R. Ngandori/Kiriari/5574 for the applicant's mother and L.R. 5575 for the respondent's mother. The widows of the deceased are now deceased and the respondent inherited his mother's land.
6. It was further stated that there exists a land dispute relating to user between the parties of respondent's land L.R. 1575.
7. The affidavits of the parties and their written submissions are actually arguing both the application for injunction and the application for revocation of grant.
8. The prayers before the court in this application are for injunctive orders against the respondent. I will therefore not deal with any material regarding the summons for revocation of grant.
9. It is not in dispute that a succession cause No. 11 of 1993 before Embu Senior Principal Magistrate in respect of the deceased's Ngari M'Tetu estate has been concluded. The grant authorized sub-division of the only asset of the deceased L.R. Ngandori/Kiriari/1591 into two equal shares between the two house. The parties have already taken possession of their respective parcels namely LR. 5574 for the applicants and L.R. 5575 for the respondent's family.
10. It is also not in dispute that the 1st applicant and the respondent have a pending land dispute relating to the use and occupation of L.R. 5575 belonging to the respondent in CMCC No. 199 of 2014. The respondent obtained restraining orders against the first respondent but the main suit is still pending determination.
11. The applicants admit that they are aware of the sub-division of L.R. No. 5575 into several parcels by the respondent who has transferred some parcels to 3rd parties. This essentially means that there is no parcel in existence known as Ngandori/Kiriari/1591 the title having been closed on sub-division.
12. The applicant argues that there are no boundaries or beacons on the ground. This is an argument that does not make sense since the applicants have attached copies of register for the new parcels created upon sub-division of the respondents land L.R. No. 5575. these are L.R. Nos. Ngandori/Kirriari/6885, 68866, 6887, 6888 and 6889. The parcels are in the names of the respondent David Njeru Ngari save for L.R. No. 6888 which is registered in the name of Zakariah Njeru Mangu.
13. The applicants have not joined Zekariah Njeru Mangu as a party in these proceedings. The proprietorship of the resultant parcels being as it is requires that all the parties be involved in any application seeking orders that are likely are to affect the proprietors be joined as parties to defend their interests.
14. The respondent's case is that the applicants do not occupy any of the parcels resulting from sub-division of L.R. 5575 but are in occupation of their late mother's parcel Ngandori/Kiriari/5574. This is the position on the ground since the sub-division of the original parcel L.R. Ngandori/Kiriari/1591 was done more than six (6) years ago as shown by the 1st applicant's affidavit on record sworn on 9/11/2010.
15. The respondent was registered as proprietor on transmission of L.R. 1575 which was his mother's share and issued with the title in 2012. This was after he obtained a grant in Succession Cause No. 189 of 2009 in respect of his mother's estate Jedida Ruguru Ngari. The applicants who already had their mother's share did not file any objection or protest in the Succession Cause No. 189 of 2009.
16. The applicants in their pleadings were very economical with the truth regarding the situation on the ground as regards the use and occupation of the parcels in issue. It was not shown that the applicants are in occupation of any of the parcels listed in their application.
17. The applicants have not joined the proprietor of L.R. Ngandori/Kiriari/6888 as a party these proceedings which is a legal requirement.

18. I find that the applicants have failed to establish a *prima facie* case and to meet the conditions of granting an injunction against the respondent. The respondent followed the due process of the law in acquiring the land L.R. Nos. Ngandori/Kiriari/6885, 6886, 6887, 6888 and 6889.

19. As for L.R. Ngandori/Kiriari/5574, the applicants have not shown that the respondent is interested with it in any way.

20. I find the application dated 16/08/2016 not meritorious and it is hereby dismissed.

21. Each party to meet their own costs.

22. It is hereby so ordered.

DATED, DELIVERED AND SIGNED THIS 20TH DAY OF SEPTEMBER, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Guantai for Fatuma for respondent