



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

PROBATE & ADMINISTRATION CAUSE NO.5 OF 2017

DAVID MUNGAI THEURI.....DECEASED

- A N D -

ELIJAH KINYANJUI MUNGAI.....APPLICANT

- V E R S U S -

MARY NDUTA MUNGAI.....RESPONDENT

R U L I N G

The Summons dated 15/12/2015, was filed by **Elijah Kinyanjui Mungai**, pursuant to Rule 49 and 73 of the Probate & Administration Rules: He seeks the following orders against **Mary Nduta Mungai**.

- 1. The court be pleased to issue preservative orders on parcels of land Nyandarua/Mawingo Salient 5329; 5330, 5331 and 5332 pending the hearing and determination of this application.**
- 2. That the Honourable court be pleased to cancel and/or nullify titles for parcel land No.Nyandarua/Mawingo Salient/5329, 5330, 5331 and 5332 created out of original parcel of land number Nyandarua/Mawingo Salient/393 and the estate be preserved until this cause is determined.**
- 3. That costs of the application be borne by the Respondent.**

The application is based on grounds found on the face of the application and an affidavit sworn by the applicant. Mr. Kamanga, counsel for the applicant also filed submissions on 2/7/2017.

Despite the fact that the respondent's counsel, **M/S. B.W. Mathenge Advocate** were served with the application, they did not attend the hearing nor did they file any replying affidavit or submissions.

The cause before me relates to the estate of **David Mungai Theuri (deceased)**. The respondent was one of the deceased's wives whereas the applicant is the son of the deceased from the first house. The respondent had moved to court in Nyahururu Succession Cause No.42/2000 in which she was issued with grant to administer the deceased's estate but the applicant moved this court for revocation of the said grant. The grant which had been issued on 7/11/2000 was by consent, annulled on 17/11/2010 and the applicant and respondent were appointed as joint administrators.

In accordance with the consent order, the two administrators were supposed to file an application for distribution within 60 days but they did not do so. The consent read as follows:-*see Order of 17/11/2010*.

“By consent

- 1. The Grant issued herein on 7/11/2000 is hereby annulled and revoked and**
- 2. The petitioner and objector are hereby appointed joint administrators of the estate;**
- 3. Counsel for the respective parties to file application for distribution of the estate within 60 days of today's date;**

4. Mention on 18/1/2011”

As per the affidavit of the applicant, he left the country soon thereafter and returned in November 2015 only to find that the deceased’s estate which comprised land parcel Nyandarua/Mawingo Salient/393, had been subdivided into four parcels Nyandarua/Mawingo Salient 5329, 5330, 5331 and 5332 and that they had been transferred to Muthoni Wamai Chege, David Wamae Mungai and Njehia Paul Gicheha, respectively and the only remaining parcel under the respondent’s name is 5332.

It is the applicant’s contention that the respondent’s actions in having the land subdivided is contemptuous of the court order because the land has been subdivided without the input of the applicant.

I have considered the application and it is clear that both the applicant and respondent are joint administrators of the deceased’s estate since 17/11/2010 when the parties entered into a consent. By the same consent, the parties were supposed to file affidavits on distribution of the deceased’s estate, but to date, no such application has been filed. This application was filed in 2015. It therefore follows that so far the deceased’s estate has not been distributed.

However, annexures to the application in terms of the search certificates do confirm that the estate has been distributed. The question remains, how the respondent managed to distribute the estate without a confirmed grant from this court. The respondent did not reply to the application despite having been served and the only conclusion that this court can arrive at is that the application is unopposed and the distribution was fraudulent. The application is merited and allowed.

Consequently, I grant prayer 3 of the summons and order:

- 1. The titles Nyandarua/Mawingo Salient/5329, 5330, 5331 and 5332 be and are hereby nullified;**
- 2. That the title to revert back to the original title Nyandarua/Mawingo Salient/393 in the name of the deceased;**
- 3. The said land be preserved pending the hearing and determination of this cause.**

The respondent to bear the costs of the application.

Dated, Signed and Delivered at NYAHURURU this 23rd day of November 2017.

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R.P.V. Wendoh

JUDGE

PRESENT:

Mr. Mwangi holding brief for Mr. Kamanga - for Applicant

N/A - Respondent

Soi - Court Assistant