



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
SUCCESSION CAUSE NO 909 OF 2013

DANSON CHEGE RURUMO.....1ST ADMINISTRATOR/APPLICANT

VERSUS

MAINA RURUMO2ND ADMINISTRATOR/PROTESTOR

J U D G M E N T

1. On 23rd January 2014 a grant of letters of administration intestate to the estate of the Deceased herein, **Rurumo Chege**, was issued jointly to two of the Deceased's four sons, **Danson Chege Rurumo** and **Maina Rurumo**. The other two sons were **Michael Muraguri Macharia** (alive and well) and **Josphat Waithaka Rurumo** (who died after the Deceased).

2. The 1st Administrator, **Danson Chege Rurumo** (the eldest son) applied by **summons dated 09/09/2014** for confirmation of the grant. He proposed at paragraph 6 of his supporting affidavit that the two parcels of agricultural land of the Deceased, **L.R. LOC 5/SUB-LOC 5/754** and **L.R. LOC 12/SUB-LOC 5/486** be shared equally between the four sons of the Deceased (**Stephen Irungu Waithaka** to stand in for his deceased father Josphat Waithaka Rurumo). He also proposed that he alone gets absolutely the Deceased's commercial plot, **L.R. LOC 12/SUB-LOCATION 5/MURINGAINI/T.204**.

3. Michael Muraguri Rurumo and Stephen Irungu Waithaka are agreeable to the 1st Administrator's proposals for distribution as evidenced by their written consent dated 09/09/2014. The 2nd Administrator, Maina Rurumo, however, filed an **affidavit of protest** on 10/09/2014. Whereas he agreed with the 1st Administrator's proposals in respect to land parcel LOC 12/SUB-LOC 5/486 and the commercial plot LOC 12/SUB-LOCATION 5/MURINGAINI/T.204, he objected to the proposed distribution of land parcel LOC 12/SUB-LOC 5/754. His ground of objection is that about 1962 he had purchased one (1) acre of land from someone for KShs 500/00 which was consolidated together with the Deceased's lands and registered in the Deceased's name as land parcel LOC 12/SUB-LOC 5/754. He therefore counter-proposed that he should get a bigger portion (1.75 acres) in this parcel while his three brothers shared equally the remainder (2.25 acres).

4. The protested summons for confirmation of grant was heard by way of oral evidence. The 2nd Administrator/Protestor testified and called 2 witnesses. The 1st Administrator also testified but did not call any witness. However, both his other brother, Michael Muraguri Macharia and his deceased brother's son Stephen Irungu Waithaka, in addition to their written consent, informed the court orally at the hearing that they agreed with the 1st Administrator's proposals for distribution.

5. I have considered the testimonies of the 2nd Administrator/Protestor and his witnesses, as well as the testimony of the 1st Administrator (who was not cross-examined by the 2nd Administrator). The 2nd

Administrator testified that he bought the one acre in October 1962 from one **Mwangi Gachaga**, who died in 1980, for KShs 500/00; that there was no sale agreement; that when he bought the land he was about 39 years old and already married but without any child yet; and that his father (the Deceased) advised him that he should let his one acre be registered in his (Deceased's) name so that in the event the Government gave people land he would also be given land.

6. The 2nd Administrator further testified that the vendor, Mwangi Gachaga, then agreed to give the one acre to the Deceased by a document dated 19/02/1963 he produced in evidence as **Exhibit D1**. He conceded, though, that Exhibit D1 did not state that he was the one who had bought the one acre.

7. He also testified that in 1963 the Deceased gave each of his 4 sons their own portions of his consolidated parcel, and that he was given a larger portion because of his one purchased acre; that except for the boundary between him and the 1st Petitioner (which the latter kept destroying), there were clear boundaries marking the portion of each son, and that his is larger to this day; and that in a case between him and the 1st Administrator, which was chaired by their Assistant Chief, the elders agreed that he had indeed purchased 1 acre which was consolidated together with the Deceased's lands.

8. In cross-examination the 2nd Administrator stated that he raised his claim to the one acre at all family meetings pertaining to the Deceased's lands. These family meetings were obviously after the Deceased's death for he further stated in cross-examination that it was only in the year 2004 that he filed cases with elders claiming the one acre, and that it was after both his father and mother, as well as the alleged vendor, had died. He added that the Deceased died in 1978 while their mother died in 2003.

9. The first witness for the 2nd Administrator, **Joseph Gichimu** (DW2) testified that he had observed the 2nd Administrator's portion in their father's land to be larger than those of his brothers, though he did not state by how much. His second witness, **Stephen Chege Macharia** (DW3) testified that he was an elder in a case between the two Administrators on 05/06/2004 over their father's land, and that the elders were satisfied that the 2nd Administrator had indeed purchased one acre from one Mwangi Gachaga which was included in the Deceased's land. He also stated that he knew that the Deceased had shared his land to his sons, and that the 2nd Administrator's portion was larger than his brother's; he did not state how much bigger. In cross-examination he stated that he did not know why the 2nd Administrator did not ask from his father for his one acre while he was alive.

10. In his unchallenged testimony the 1st Administrator stated that the 2nd Administrator only raised his claim to the one acre after the Deceased's death. But he acknowledged the case heard by elders chaired by the local Assistant Chief; he stated that he in fact instituted the case himself after the 2nd Administrator made the claim, but that the elders only ruled that there was indeed some land that came from outside which was consolidated together with their father's land, without ruling that the 2nd Administrator had bought that land.

11. Ideally, cases for declaration and determination of trusts in land (and the 2nd Administrator's claim to the one acre is one such!) ought to be determined in a proper suit brought in a proper court. Determining such weighty issues in a simple proceeding like a succession cause where there are no pleadings filed in respect to such claim is not the proper thing to do.

12. In the present matter I note that the 2nd Administrator raised the issue of his alleged purchase of one acre only after the deaths of their father (the Deceased) in 1978 and that of their mother in 2003. He never even raised it when his most important witness, the alleged vendor, was alive (he died in 1980).

13. I am not satisfied that the 2nd Administrator has established on a balance of probabilities that he purchased 1 acre of land which was included with his father's lands at the time of land consolidation and registration which would entitle him to a bigger portion of the Deceased's estate than his three brothers. I reject his claim.

14. In the result, I will allow the summons for confirmation of grant as prayed. Distribution shall be as proposed at paragraph 6 of the supporting affidavit. It is so ordered.

15. Parties shall bear their own costs of these proceedings.

DATED, SIGNED AT MURANG'A THIS 28TH DAY OF APRIL 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 29TH DAY OF APRIL 2016