



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2374 OF 2003

IN THE MATTER OF THE ESTATE OF FRANCIS MWANGI NDUNG’U (DECEASED)

SHEET AND METAL WORKS CO. LTD.....APPLICANT

VERSUS

ROBERT MAINA MWANGI.....RESPONDENT

RULING

1. The deceased Francis Mwangi Ndung’u died intestate on 20th March 2003 in Kiambu. On 25th August 2003 his widow Jane Wanjiru Mwangi and son Robert Maina Mwangi (respondent) petitioned the court for the grant of letters of administration intestate. This was done with the consent of Jackson Ndung’u Mwangi and Grace Wangari Mwangi who were the other children of the deceased. The grant was issued on 17th October 2002. The grant was confirmed and certificate to that effect issued on 11th May 2004. The proceeds of Barclays Bank A/C No. 8228777 were ordered to go to Jane Wanjiru Mwangi absolutely. The following properties were ordered to be registered in her name in trust for herself and the her three children in equal shares:
 - a. Ruiru East/Juja East Block 2/1202;
 - b. Ruiru East/Juja East Block 2/1203;
 - c. Ruiru East/Juja East Block 4/T.1386;
 - d. Ruiru East/Juja East Block 4/T.1385;
 - e. Nairobi/Block 119/1797;
 - f. Nguirubi/Ndiuni/227;
 - g. LR NO. 76/242 Thindigua;
 - h. LR 76/596 Thindigua; and
 - i. LR No. 76/79 Thindigua.
2. Jane Wanjiru Mwangi died on 3rd December 2005. On 18th July 2007 the respondent sought the appointment of Grace Wangari Mwangi to replace her late mother (Jane) as administrator. He further sought that the certificate be rectified and the estate be distributed to them (respondent, Jackson and Grace) in equal shares. To the estate was added the following assets each of which was to be shared equally among them:-
 - a. Housing Finance Company of Kenya Ltd shares;

- b. Standard Chartered Bank shares;
- c. Plot No H5, Block G, Dandora;
- d. LR 209/9432;
- e. Ruiru Kiuu Block 6/217; and
- f. Plot No. 326 – Kariobangi;

On 14th May 2008 the application was withdrawn. On 13th May 2009 a similar application for rectification was brought, but this time sought that the name of Jane Wanjiru Mwangi as administrator to be deleted to leave only the respondent, and that the estate to include the following property (which had been excluded at confirmation) and be shared equally among the three children of the deceased:-

- a. Plot No 1178 – Githurai Tinganga Co. Ltd;
- b. Share Certificate No. 910 Githurai Tinganga Co. Ltd;
- c. LR Nguirubi/Ndiuni/227;
- d. Cooperative Bank A/C No. 0110942463800;
- e. LR 209/9432;
- f. LR Ruiru/Kiu/Block 6 217;
- g. Plot No. 326 – Kariobangi;
- h. HFCK Shares;
- i. Standard Chartered Bank Shares;
- j. NIC Bank Shares; and
- k. Githurai Plot No. 1183.

The application was allowed on 7th July 2009.

- 3. On 14th October 2011 there was another application for rectification. This was occasioned by the death of Jackson Ndung’u Mwangi. It was sought that his name be replaced by that of his widow Florence Katumbi Mwololo. On 30th November 2011 the application was allowed.
- 4. The present application was filed by Sheet and Metal Works Ltd (the applicant) on 9th September 2015 seeking to remove Plot No. 326 – Kariobangi from the schedule of assets in the certificate of grant and to declare the sale agreement dated 16th June 2008 between the respondent and Nginu Power Engineering (EA) Ltd null and void as it was done before the grant was confirmed. Anthony Gitiche Mbau is a director of the applicant company. He swore a supporting affidavit to say that they bought the plot from one John Kimani who was the original allottee. The purchase was sanctioned by the Nairobi City Council which gave letter dated 12th March 1986. The applicant took possession of the same. The applicant paid the standing premium, survey fees and ground rent. The plot was surveyed and deed plan processed (“SAM 2”) in preparation of the title deed. On 23rd October 2014 John went to pay ground rent and to ask for the title deed but was surprised to be told that a third party had paid rates. He found that the third party was Nginu Power Engineering (EA) Ltd who claimed that the plot had been sold and transferred to them on 16th June 2008 by the respondent, Grace Wangari Mwangi and Jackson Ndung’u Mwangi. On 10th November 2014 the City Council wrote to the applicant to say that it had cancelled the transfer to Nginu Power Engineering (EA) Ltd and plot reverted to it. The application was served on the respondent but there was no response.
- 5. It is clear that as of 16th June 2008 when the respondent, Grace Wangari Mwangi and Jackson Ndung’u Mwangi were selling this plot to Nginu Power Engineering (EA) Ltd for Kshs,2,600,000/= they did not have a confirmed grant in respect of the property. They had no legal authority over the property as it was not even the declared property of the deceased at the time of the petition for grant of letters of administration. Secondly, the applicant has through documentary evidence demonstrated that the plot belonged to it, and therefore the administrators and/or beneficiaries of the estate of the deceased had no claim to it. They could not sell and/or

transfer a property that neither them nor the deceased owned. I find, therefore, that Plot No. 326 – Kariobangi Light Industries Nairobi belongs to the applicant Sheet and Metal Works Limited. I also find that the purported sale dated 16th June 2008 of the plot by Robert Maina Mwangi, Grace Wangari Mwangi and Jackson Ndung’u Mwangi to Nginu Power Engineering (EA) Ltd was illegal, null and void. In those terms, I allow with costs the application dated 7th September 2015 and filed on 9th September 2015.

DATED AND DELIVERED at NAIROBI this 18TH APRIL, 2016.

A.O. MUCHELULE

JUDGE