



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CIVIL APPEAL CASE NO. 181 OF 2013

NGOTHO NJIRAINI.....APPELLANT

VERSUS

NGARI NJIRAINI.....1ST RESPONDENT

THE MANAGER, MWEA IRRIGATION SCHEME.....2ND RESPONDENT

JUDGMENT

1. **Ngoto Njiraini** is the appellant herein who was aggrieved and dissatisfied with the ruling dated 30th June, 2009 in Wanguru Senior Resident Magistrate's Court Miscellaneous Succession Cause No. 25 of 1992. The said ruling was in respect to an application dated 25th February, 2008 in that court which sought to review the orders that had been issued by that court dated 4th February, 1999 which orders had appointed NGARI NJIRAINI, the 1st respondent herein as the nominee of Rice Holding No. 3306 Wamumu Section in place of NJIRAINI CHIMBA – the deceased.

2. This Court has looked at the application dated 25th February, 2008 and the ruling dated 30th June, 2009 which is now the subject of this appeal. The trial court dismissed the said application and made the following findings:

- i. *That the 1st respondent was appointed as the nominee to inherit the rice holding by consent of the relatives of the deceased who were present in court.*
- ii. *That the 2nd respondent herein had filed names of the relatives of the deceased and the appellant was listed therein and that he was also present in court when the names were read.*
- iii. *That the orders made on 4th February, 1999 had been made more than 10 years prior to the filing of the said application and that in the court's view that was an inordinate delay.*

The subordinate court in light of the above dismissed the application prompting this appeal where the appellant has cited 5 grounds as follows:

- a. *That the learned magistrate erred in law and fact in disregarding the provisions of the Irrigation (National Irrigation Schemes) Regulations under cap 399.*
- b. *That the learned magistrate erred in law and fact in disregarding the fact that the application dated 25th February, 2008 was unopposed.*
- c. *That the learned magistrate erred in law and fact by failing to find that there were sufficient grounds to allow the application dated 25th February 2008.*
- d. *That the learned magistrate erred in law and fact by failing to note that the appellant had been nominated.*

e. ***That the learned magistrate erred in law and fact in disregarding the provisions of the Law of Succession Act Cap. 160 Laws of Kenya.***

3. The appellant and the respondent both agreed to dispose of this appeal through written submissions which I have seen. The appellant in his written submissions made through his learned counsel M/S Magee wa Magee & Co. Advocates has reiterated the grounds upon which this appeal has been presented. He has contended that there was no delay in presenting his application for review as he learnt about it only one and a half months prior to the filing date and that in his view was not inordinate.

4. The 1st respondent has opposed this appeal through his written submissions made through his learned counsel M/S Bwononga & Co. Advocates. In his contention the learned trial magistrate never contravened any provisions in the Irrigation Act Cap 399 Laws of Kenya. The 1st respondent has supported the dismissal of the appellant's application dated 25th February, 2008 by the learned trial magistrate stating that the application did not meet the legal requirements under **Order 45** of the **Civil Procedure Rules** as there was no discovery of a new and an important matter or evidence which was not within the knowledge of the appellant at the time. He has also contended that there was no mistake or error apparent on the face of the record or any sufficient reason to warrant a review.

5. The 1st respondent has further submitted that the appellant was a stranger in the proceedings in the lower court as he was not a party and ought to have first sought to be enjoined in the proceedings and that by virtue of that he is still a stranger even in this appeal.

6. I have considered this appeal and the proceedings in the lower court. I have also considered the response made. It is pertinently clear that the proceedings in the lower court related to an estate of a deceased person which appears to have comprised of a rice holding number 3306 Wamumu or an interest of that particular rice holding. It is not clear whether Njiraini Chimba the deceased therein, had other properties because the details in the file are scanty. It is clear that the proceedings in the lower court began from the wrong footing in law as it began through what is described as a miscellaneous Succession Cause. The law relating to estates of deceased persons in Kenya are governed by **Law of Succession Act Cap. 160 Laws of Kenya. Section 2 (1)** of the cited law provides as follows:

“Except as otherwise expressly provided in this Act or any other written law the provisions of this Act shall constitute the law of Kenya in respect of and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and the Administration of estates of those persons.”

The proceedings in the lower court should have begun by way of a petition for letters of administration in respect to the estate of the late NJIRAINI CHIMBA who died on 6th August, 1988. There is no other legal way to succeed or inherit the property of a deceased person other than as is prescribed by law. I therefore find that, even without going into the merits of the application dated 25th February, 2002, the proceedings used by the Respondent to inherit the interests in that property comprised in rice holding No. 3306 were defective and incompetent. The same was not tenable in law. The appellant herein should have sought to nullify the proceedings and commence legal proceeding to properly administer the estate of the late NJIRAINI CHIMBA in accordance with the law. This Court finds Regulation No. 7(1) of Irrigation (National irrigation Scheme) Cap. 347 enacted in 1977 is subject to Law of Succession Act Cap 160 Laws of Kenya that came into operation on 1st July 1981. It cannot be the other way round and so there was no reason or excuse for the parties herein not to comply with the latter laws that now govern intestate and testamentary succession and the administration of estates of deceased persons in Kenya.

7. In the premises this Court has no other option but to revoke and annul the entire proceedings in Wanguru Miscellaneous Succession Cause No. 25 of 1992. Any order emanating therefrom is hereby set aside. The parties should proceed in accordance with the **Law of Succession Act Cap. 160** in managing, administering or in any way dealing with the estate of the late Njiraini Chimba, deceased. Each party to bear own costs.

Dated and delivered at Kerugoya this 15th day of June, 2016.

R. K. LIMO

JUDGE

15.6.2016

Before Hon. Justice R. Limo, J.,

Court Assistant Willy Mwangi

Magee for appellant present

Respondent absent

Macharia holding brief for Magara present.

COURT: Judgment signed, dated and delivered in the open court in the presence of Magee Advocate for appellant and Macharia holding brief for Magara for 1st respondent.

R. K. LIMO

JUDGE

15.6.2016