



IN THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 114 OF 2007

IN THE MATTER OF THE ESTATE OF KARUNTIMI ANGAINE MUCHERI DECEASED)

DANEIL MURITHI ANGAINE.....ADMINISTRATOR/APPLICANT

Versus

STANELY MUTWIRI ANGAINE.....1ST RESPONDENT

ERICK KINYUA KIARA.....2ND RESPONDENT

RULING

Inhibition on land

[1] Application dated 30th June 2015 essentially seeks for:

- a) Inhibition of dealings in L.R.No. Nkueni/l –Mikumbune/582 (hereinafter the suit property);***
- b) Cancellation of registration of the suit property in joint names of the respondents; and***
- c) Reverting the suit property into the names of Stanley Mutwiri Angaine and Karuntimi Angaine Muchere (deceased).***

[2] The application is grounded on the supporting affidavit and a further affidavit sworn by the Petitioner/ Applicant. From the material filed, the major grounds for applying are: that following a rectification of the certificate of grant on 3rd June 2014 the suit property was to be shared between DANIEL MURITHI ANGAINE and STANLEY MUTWIRI ANGAINE. But through fraud and deceit the Respondents caused the suit land to be registered in their joint names. According to the Petitioner, the 2nd Respondent is in fact a total stranger to the estate of the deceased. Therefore, the said registration of the suit property in their joint names was illegal and unlawful and should be cancelled and revert the property into the joint names of the 1st Respondent and the deceased.

[3] The 1st Respondent opposed the application. He filed a replying affidavit sworn on 3rd December, 2015 in his own behalf and that of the 2nd Respondent. He averred that the Administrator/Applicant filed this cause secretly and without the deponent's knowledge. He averred that he only learnt of this cause in July 2015. He deposed that he and his late brother to whom this cause relates jointly purchased the suit land and were issued with a title deed thereto. His major concern is that the Applicant who is their elder brother did not contribute towards purchase of the suit land and so he should not lay any claim on the land at all. He added that he did not consent to the distribution of the estate herein. In any case he relied on the

rule on survivorship in respect of the suit land which he said warrants him to be registered as the owner in view of co-ownership of the land.

Submissions

[4] Following consent of the parties, the court on 7th January 2015 directed parties to file submissions. The Applicant filed submissions on 18th February, 2016. He accused the respondents of fraud in the registration of the suit land yet it formed part of the estate property. He stated that he realized that the grant had an error in the description of the suit property which he applied to be rectified. He is of the view that the respondents have failed to explain how they managed to register themselves as owners of the suit property. He stated that the record shows that the 1st Respondent gave his consent to these proceedings and attended court on numerous occasions. Therefore inhibition should be registered on the land in order to enable court to distribute the land to the proper beneficiaries. He also urged court to direct investigation on this fraud by the relevant authorities.

[5] The Respondents also filed submissions on 17th March 2016. He insisted that he and his late brother were joint owners of the suit land and upon his death he became the owner. Therefore, the Applicant has no *locus standi* on the land.

DETERMINATION

[6] I will not address the request for rectification since that application is yet to be heard. I will only determine two issues:

(a) Whether an inhibition is merited; and

(b) Whether the registration of the suit land should revert back into the names of the 1st Respondent and the deceased.

[7] There is no doubt that on 21st October, 1988 the suit land was registered in the names of Stanley Mutwiri Angaine and the deceased in equal shares. And a title deed was issued on 7th November, 1988. The suit property was listed as one of the estate properties in P&A 5 that was filed in court. But the 1st Respondent has now raised the rule of survivorship in joint owners of a property. That is a substantial issue that will require intense interrogation as it bears fundamental effect on the law of inheritance. If indeed a joint ownership is established such property will not form part of the estate of the deceased. See the decision of the court in the case of **BENSON MUTUMA MURIUNGI vs. C.E.O. KENYA POLICE SACCO and SARAH KAGWIRA [2016] eKLR** when it rendered itself as follows:

Property held by the Deceased as a Joint Tenant Property held under a joint tenancy is subject to the rule of survivorship. Under the said rule the deceased ceases to be entitled to the property on his death where he or she is survived by one or more joint tenants; the surviving joint tenant takes the deceased's share by virtue of their surviving the deceased. Therefore, property in joint tenancy or ownership will only form part of the deceased's estate where the deceased is the only surviving joint tenant.

See also eminent literary work by William Musyoka in his book "**Law of Succession**" published by Law Africa at page 36 where he discusses survivorship as follows:

"This applies in cases of joint tenancies that is where property is jointly owned. Where a co-owner of property is a beneficial joint tenant of the property, whether real or personal, their interest will automatically pass to the surviving joint tenant (s) upon their death by virtue of the principle of survivorship, otherwise known as the principle of jus accrescendi. Upon the demise of one of the tenants, that tenants' interest would merge with that of the surviving tenant...."

The principle of survivorship operates to remove jointly owned property from the operation of

the law of succession, upon the death of a spouse who jointly owns property with the other spouse.”

I have stated that the title of the suit property had been registered in the names of the 1st Respondent and the deceased in equal shares. There is however, no material before the court which succinctly show that the ownership was joint or in common. The lacunae will require documents from the lands registration office to establish what kind of proprietorship this was before anything substantial can be said. For now, in order to preserve the suit property, I will order an inhibition to be placed upon the suit land until I determine the above issue and make further orders. But, I will not cancel the current registration until I decide on the foregoing issue. The record will remain as is except there shall be no further dealings on the land. It is so ordered.

Dated, signed and delivered in open court at Meru this 13th day of

June 2016.

F. GIKONYO

JUDGE

In the presence of:

M/s. Wanjohi advocate for Mr. Kiogora Ariithi advocate for respondent

M/s. Njagu advocate for Mr. Kimathi advocate for petitioner.

F. GIKONYO

JUDGE