



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 412 OF 2011
IN THE MATTER OF THE ESTATE OF PETER MUIYAE MURANI(DECEASED)

RULING

1. This cause is in respect of the estate of one Peter Muiyae Murani, who died on 14th June 1998. He was said to have died testate, having left a will allegedly made on 15th October 1996. Representation to his estate was sought by John Kimuhu Muiyae and Peter Murani Muiyae, vide a petition for probate of a written will or for proof of oral will lodged at the registry in this cause on 1st March 2011. A grant of probate of written will was made to the petitioners on 5th July 2011. The said grant is yet to be confirmed.

2. The administrators, for that is what they are for they have not been named in the will of 15th October 1996 as executors, lodged in the cause on 6th October 2011 a summons in chambers, dated 5th October 2011, premised on sections 49 and 73 of the Law of Succession Act, Cap 160, Laws of Kenya. The said application sought three principal orders: -

- a. for the restraint of the respondents from alienating of parcels numbers Ngong/Ngong/33811 to 33819 or any other subdivisions of Ngong/Ngong/4348 and 4354 pending hearing *inter partes* of the application,
- b. for restraint of the Land Registrar, Kajiado District, from registering any dealings with the said parcels of land pending the *inter partes* hearing of the application, and
- c. directing the Land Registrar, Kajiado District, to cancel the said titles and any entries and transactions relating to them, and to cause the relevant registries to be rectified so as to insert the name of the deceased as the registered proprietor of all the said parcels of land.

3. The said application is premised on the grounds set out on the face of the application, as well as on the facts deposed in the affidavit in support sworn by the two administrators on 5th October 2011. The persons named as respondents are said to have accessed these assets through Kiambu PMCS No. 106 of 1999 in the estate of one Moran ole Ngare, who the administrators assert was never the registered owner of the parent parcels of land, Ngong/Ngong/4348 and 4354.

4. The administrators have attached a number of documents to their joint affidavits to support their case. There is a copy of the title deed in respect of Ngong/Ngong/ 4354, dated 21st March 1995, which details the proprietor to be Peter Muiyae Murani. There is also copy of title deed for Ngong/Ngong/4348, dated 22nd March 1995, where Peter Muiyae Murani is depicted as proprietor thereof there is a search certificate in respect of Ngong/Ngong/4348, dated 18th March 2010, which shows that the register for the said parcel

of land was closed on an undocumented date following subdivision thereof into parcels numbers Ngong/Ngong/33811 to 33819. Copies of searches conducted on 15th April 2010 on Ngong/Ngong/33811 to 33819 showing the following results:-

- a. Ngong/Ngong/33811 was registered to Samuel Ngugi Muraya on 25th January 2005;
- b. Ngong/Ngong/33812 was registered on 25th January 2005 to Samuel Ngugi Muraya;
- c. Ngong/Ngong/33813 was registered to Samuel Ngugi Muraya on 25th January 2005;
- d. Ngong/Ngong/33814 was registered to Samuel Ngugi Muraya on 25th January 2005;
- e. Ngong/Ngong/33815 was registered in the name of Henry Gichuru Njoroge on 19th July 2005;
- f. Ngong/Ngong/33816 was registered to Samuel Ngugi Muraya on 25th January 2005;
- g. Ngong/Ngong/33817 was registered to Samuel Ngugi Muraya on 25th January 2005;
- h. Ngong/Ngong/33818 was registered to Purity Muthoni Ngugi on 19th July 2005; and
- i. Ngong/Ngong/33819 was registered to Purity Muthoni Ngugi on 19th July 2005.

5. There is on the record before me a replying affidavit sworn on 18th October 2011, by Samuel Ngugi Muraya, who is named in these proceedings as the first respondent. He explains that the deceased in Kiambu PMCSC No. 106 of 1999, Murani ole Ngare had died possessed of Ngong/Ngong/4008, which was thereafter registered on transmission in the name of the deceased herein, Peter Muiyae Murani, as the personal representative of Murani ole Ngare. The deceased herein, as administrator, was to share out the said asset between himself, the deponent and others. Consents were obtained, and the property was subdivided, with the first respondent getting Ngong/Ngong/4348 and 4354 therefrom. The first respondent then subsequently subdivided Ngong/Ngong/4348 and 4354 into parcels numbers Ngong/Ngong/33811 to 33819. He asserts that Ngong/Ngong/4348 and 4354 were never part of the estate of the deceased herein, Peter Muiyae Murani, but rather of the estate of Murani ole Ngare.

6. The first respondent explains further that Murani ole Ngare was the father of the deceased herein, Peter Muiyae Murani. Succession to the estate of the said Murani ole Ngare was handled through Kajiado RMCSC No. 6 of 1979, where representation had been made to the deceased herein, Peter Muiyae Murani. The first respondent allegedly inherited Ngong/Ngong/4348 and 4354 in that cause as a purchaser. The cause was then transferred to the Kiambu law courts and allocated case file number Kiambu PMCSC No. 106 of 1999.

7. It is his case that the grant was confirmed by the Kiambu court, where the two parcels of land were to come to him, but the administrator declined to transfer them, whereupon the first respondent was compelled to move the court at Kajiado to have the transfer forms in respect of the said parcels of land executed by the Executive Officer of the court. The orders were granted in Kiambu PMCSC No. 106 of 1999 and the two parcels of land were registered in his name and title deeds issued. He states that the initial registration of the deceased as proprietor was when he held the two for the benefit of the first respondent. He adds that the lands authorities even had to publish a notice in the *Kenya Gazette* calling for the cancellation of the tiles to facilitate registration in his name. He asserts that the confirmation orders in Kiambu PMCSC No. 106 of 1999 were never appealed. He further asserts that the two parcels of land were not available for disposal by will by the deceased herein.

8. The first respondent has attached a number of documents to his affidavit. There is copy of a letter of consent dated 27th March 1980, from the Land Control Board for the Ngong area, addressed to the deceased herein, permitting the subdivision of Ngong/Ngong/4008 in favour of, among others, S N

Muraya. There is copy of a mutation form in respect of Ngong/Ngong/4008, dated 24th April 1980, listing Samuel Ngugi Muraya, among the persons interested in the subdivision. There is too copy of title deed, dated 15th August 2000, indicating the first respondent as proprietor of Ngong/Ngong/4354. There is a copy of an order made in Kiambu PMCSC No. 106 of 1999, on 22nd June 2000, authorizing the Executive Officer of the court to execute the relevant documents pertaining to the transfer of Ngong/Ngong/4348 and 4354. There is also copy of proceedings in Kiambu PMCSC No. 106 of 1999 between the administrators herein and the first respondent. Finally, there is Gazette Notice Number 4289 in the *Kenya Gazette* of 14th July 2000 pertaining to transfer of Ngong/Ngong/4348 and 4354 by the deceased herein to the first applicant, where the Land Registrar was stating that should the deceased herein fail to surrender the original titles he would dispense with the production of the said title documents and proceed to issue new titles to the first respondent.

9. In response to the averments made in the affidavit of the first respondent of 18th October 2011, the administrators assert that Ngong/Ngong/4008 was not in existence as at the date of the death of Murani ole Ngare. It is their case that the deceased herein acquired the said property on first registration and was issued with a Land Certificate dated January 1980. He thereafter caused the same to be subdivided into Ngong/Ngong/4348 and 4354, which were registered in his name, and which were free property that he could will away. They allege that Kiambu PMCSC No. 106 of 1999 was not about the estate of Murani ole Ngare and that the said estate had been wrongly initiated. They state that Ngong/Ngong/4348 and 4354 were not in existence in 1979, and therefore the first respondent could not have purchased them from Murani ole Ngare, and in any event there was no contract in writing between the said Murani ole Ngare or the deceased herein and the first respondent. It is also asserted that no confirmation orders granted the two parcels of land to the first respondent.

10. The first respondent filed a further affidavit on 25th January 2012, sworn on 24th January 2012. He avers that by the time Murani ole Ngare died Civil Appeal Number 49 of 1977 touching on LR No. 820 was still pending. After his death, the deceased herein became the administrator of his father's estate. At the close of the appeal hereinabove referred LR No. 820 was ordered to be shared equally between Murani ole Ngare, Karanja Kamomo and Mepukori ole Pere. One of the three subdivisions from that parcel of land was Ngong/Ngong/4008, which went to Murani ole Ngare, but as he was dead by then the property was recorded in the name of the administrator of his estate, Peter Muyai Murani. Being an administrator the said Peter Muyai Murani was bound to distribute the estate amongst the heirs and purchasers. He states that Kajiado RMCSC No. 6 of 1979 was initiated by the said Peter Muyai Murani. He asserts that Peter Muyai Murani's registration as proprietor of Ngong/Ngong/4008 was not a first registration.

12. Directions were given on 27th June 2012 that the application dated 5th October 2011 be disposed of by way of written submissions to be highlighted on 24th September 2012. Both sides complied with the directions. The applicants' submissions are dated 16th April 2013, and were filed herein on 17th April 2013. The respondents' submissions are dated 30th May 2013 and were filed in court on 31st May 2013.

12. After carefully reading through the affidavits and the annexures attached thereto, as well as the written submissions filed by the advocates for both sides, I formed the opinion that the answer to the issues raised by the parties lay in Kajiado RMCSC No. 6 of 1979, which later became Kiambu PMCSC No. 106 of 1999. Consequently, I made an order on 25th September 2015 calling for the lower court file, which was subsequently availed.

13. I have perused through the record in Kiambu PMCSC No. 106 of 1999. What I can construct from it is drawn from Kiambu PMCSC No. 106 of 1999, as well as HCCC No. 678 of 1972, Court of Appeal Civil Appeal No. 49 of 1977 and HCCA No. 307 of 1995. Kiambu PMCSC No. 106 of 1999 was initiated as Kajiado RMCSC No. 6 of 1979. The procedure followed was that provided by section 120 of the Registered Land Act, Cap 300 Laws of Kenya, now repealed. The Law of Succession Act came into force thereafter in 1981. Kajiado RMCSC No. 6 of 1979 was initiated by the Land Registrar as per section 120 of the Registered Land Act, following the findings in HCCC No. 678 of 1972 and Court of

Appeal Civil Appeal No. 49 of 1977.

14. The cause was meant to determine succession of some thirty five (35) persons to the estates of Karanja Kamomo and Moiyae ole Murani (also referred to in those proceedings as Moran ole Ngare) who were on Ngong/Ngong/820. According to the records in HCCC No. 678 of 1972 and Court of Appeal Civil Appeal No. 49 of 1977, the property was registered in the joint names of three persons without indicating the acreage to which each one of the three was entitled. The Court of Appeal held that each one of the three was entitled to an equal share. The entire parcel of land was 294 acres, which meant each side got 98 acres.

15. According to the District Magistrate who handled the matter, Karanja Kamomo and Moiyae ole Murani died before the subdivision of Ngong/Ngong/820. The court found that the first respondent was entitled to portions of land from the two original owners, Karanja Kamomo and Moiyae ole Murani. The final order was that the Land Registrar was to register all the heirs with their respective acreages as indicated in the ruling. The date of the ruling is not clear, but there is a certificate by the District Magistrate dated 7th May 1979. I believe the said ruling was delivered on or about that date.

16. It is plain from these proceedings that the administrator of the estate of Moiyae ole Murani was Peter Muyai Murani. After the subdivision of the land into three, the estate of Moiyae ole Murani got Ngong/Ngong/4008, which was registered in the name of the administrator, Peter Muyai Murani. There is a document on record indicating that the first respondent was to get two portions out of Ngong/Ngong/4008, measuring 7.90 acres and 2.10 acres, respectively.

17. The administrator did not make good the transfer of the portions due to the first respondent, which subsequently led to litigation in Kajiado RMCCSC No. 6 of 1979, Kajiado DMCCC No. 57 of 1980, Kiambu PMCCSC No. 106 of 1999 and HCCA No. 307 of 1995. The court eventually directed that the relevant transfer forms be signed by the competent officer of the court, which was done. The administrator remained defiant and the Land Registrar was forced to issue title deeds without requiring production of the original titles in the administrator's possession.

18. I have noted that the administrators rely on title deeds issued in 1995, while the first respondent refers to titles issued in 2000. Both relate to Ngong/Ngong/4348 and 4354. The deeds issued in 2000 must have been so issued following the court orders made on 22nd June 2000 in Kiambu PMCCSC No. 106 of 1999 and the Gazette Notice Number 4289 of 14th July 2000. There is a clear history of the said land moving from Ngong/Ngong/820 to Ngong/Ngong/4008 and eventually Ngong/Ngong/4348 and 4354, and at all these stages the interest of the first respondent is noted.

19. From the material before me, I am satisfied that Ngong/Ngong/4348 and 4354 were registered in favour of the first respondent after the cancellation of the registration of the said assets in the name of the deceased herein in 2000 as noted in paragraph 18 here above. It is my finding that the said property was legitimately so registered in favour of the first respondent. That being the case, Ngong/Ngong/4348 and 4354 could not form part of the estate of deceased herein Peter Muiyae Murani.

20. In the end, I find that there is no merit in the application herein dated 6th October 2011. The same is for dismissal, and I do hereby dismiss the same, with costs to the respondents. The court file in respect of Kiambu PMCCSC No. 106 of 1999 to be returned to the Kiambu law courts forthwith.

DATED, SIGNED and DELIVERED at NAIROBI this 10TH DAY OF JUNE, 2016.

W MUSYOKA

JUDGE