



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT CHUKA
SUCCESSION CAUSE NO. 22 OF 2016

(FORMERLY MERU HIGH COURT SUCCESSION CAUSE NO. 28 OF 1985)

IN THE MATTER OF THE ESTATE OF NTUARA AMUNGE (DECEASED)

RITHAA NTUARA.....APPLICANT

VERSUS

NJUE NTUARA.....1ST RESPONDENT

MATI NTUARA.....2ND RESPONDENT

RULING

1. On 18th February, 2016, Rithaa Ntuara (hereinafter “the Applicant”) took out a Summons under Rules 49 and 73 of the Probate and Administration Rules seeking that the grant issue on 25th March, 2015 in Chuka RM Succession Cause No. 74 of 2014 be nullified and the District Land Registrar be served with that order for compliance; that the court file for Chuka RM Succession Cause No. 74 of 2014 be transferred to this court to facilitate the hearing and determination of the application and finally that the O.C.S Chuka Police Station, do provide security during the implementation of the confirmed grant in Meru H. C Succession Cause No. 28 of 1985. The applicant also sought the costs of the application.

2. The grounds upon which the application was based were set out in the body of the Summons and the Supporting Affidavit. These were that; the applicant is the administrator of the estate of the late Ntuara Amundi (“deceased”); that the grant in these proceeding was issued on 8th August, 1972 and confirmed on 28th May, 1996; that despite participating in these proceedings while in Meru, the Respondents filed Chuka RM Succession Cause No. 74 of 2014 wherein a grant was issued and confirmed on 25th March, 2015; that the issue of the administration of the estate of the deceased is res-judicata; that the Surveyors had descended on the land to effect subdivision but were stopped by government force. In the Supporting Affidavit, the Applicant swore that it was an abuse of the court process for the Respondents to apply for another grant whilst there was one already in existence that had been confirmed; that the Respondent’s intention was to deprive the Applicant and one Rithi Ntuara their respective shares. That there is need to have security provided at the time of effecting the grant issued in the Chuka HC Succession Cause No. 28/1985 (Now Chuka H.C Succession Cause No. 22 of 2016 “these proceedings”). At the hearing, the Applicant rehearsed what was deponed in his Supporting Affidavit and urged that the application be allowed.

3. The application was opposed vide a document entitled “Reply to Affidavit” filed on 31st March, 2016. The said document was signed by both the Respondents. Although it was not an Affidavit so to

speak, this court will admit it as grounds of opposition to the application under Article 159 (2) (d) of the Constitution since these are lay litigants. In the said document, the Respondents stated that the Meru H.C. 28 of 1985 was commenced by their mother who after passing on, they never agreed on who was to be substituted as the petitioner; that there was no grant issue on 8th August, 1972 as alleged; that the Applicant and Rithi Ntuara had been given their shares by the deceased in LR No. 567 and LR No. 273 which was later transferred to the Applicant's son by the name Micheni Rithaa; that the family had a meeting at the chief's office and the Respondents were given a go-ahead to file the Chuka RM Succession Cause No. 74 of 2014. In their submissions, the Respondents told the court that plot No. LR 520 was supposed to be divided between six (6) persons and not ten (10). They denied that the High Court at Meru had made any decision on the Succession of the estate of the deceased. That since the clan and the family had agreed that they lodge the Chuka RM Succession Cause, the same should be upheld.

4. I have considered the Affidavits on record, and the submissions by the respective parties

The Summons seeks the annulment of a grant issued in Chuka RM Succession Cause No. 74 of 2015 on two grounds; that a grant in respect of the estate of the deceased had already been issued and confirmed in the present proceedings (formerly Meru H.C Succession Cause No. 28 of 1985) and that the issue of the Succession of the estate of the deceased is therefore res judicata. The same is opposed on three grounds; that the High Court at Meru had not yet determined the administration of the estate of the deceased; that these proceedings as dealt with by the High Court at Meru did not touch on the estate of the deceased and that since the clan and family had met and authorised the Respondents to commence succession on the estate of the deceased, the Chuka R.M's Succession Cause No. 74 of 2015 was proper and should be allowed to stand.

5. This matter was commenced as the Meru Resident Magistrate's Court Succession Cause No. 28 of 1985. On 24th October, 1986, **Hon. E.M Githinji**, as he then was, issued a joint grant of letters of administration intestate to Chabari Ntuara, Mati Ntuara and Rithi Ntuara for the estate of the deceased. He also issued an order to the effect that, the issue of whether Mati Ntuara and Rithi Ntuara had been given land by the deceased or that the two (2) could inherit from the estate property being Karingani/Mugirirwa/50 (sic) (meant to be 520) be referred to clan elders for determination. After the deliberation of the clan elders, by a judgment delivered on 18th January, 1996 by Hon. Solomon Wamwayi CM, it was determined that the deceased had eight (8) sons (who were to be the beneficiaries) who were entitled to 1.56 acres each and two (2) widows who were entitled to 0.8 acres each.

6. This followed the filing of a Cross- Petition by (Mate Ntuara and Njue Ntuara the Respondents herein), Njeru Ntuara, Njagi Ntuara, Njevi Ntuara, and Chabari Ntuara filed in court on 6th October, 1986. Later on, the parties entered into a consent on 28th May, 1996 whereby, Evangeline Ntuara Nkoroi, Mati Ntuara and Njue Ntuara were appointed as joint administrators of the estate of the deceased. On the same date, the court confirmed the grant by which the only asset of the estate being Karingani/Mugirirwa/520 was distributed.

- a) Rithi Ntuara - 1.56 Acres
- b) Rithaa Ntuara - 1.56 Acres
- c) Mate Ntuara - 1.56 Acres
- d) Chabari Ntuara - 1.56 Acres
- e) Njue Ntuara - 1.56 Acres
- f) Jevi Ntuara - 1.56 Acres
- g) Njeru Ntuara - 1.56 Acres

- h) Njagi Ntuara - 1.56 Acres
- i) Evangeline Ntuara Nkoroi - 0.80 Acres
- j) Janet Ntuara - 0.80 Acres

7. In or about July, 2013, the Applicant applied to be appointed to take over the place of his mother Evangeline Ntuara Nkoroi as a joint administrator. This application was allowed on 8th October, 2013 by **Makau J** who rectified the certificate of confirmation on the same day. The Applicant was therefore appointed a joint administrator and was also to hold the share of 0.8 acres of Evangeline Ntuara Nkoroi in the estate of the deceased. The record shows that when all the foregoing were taking place, the Respondents were not only notified of the proceedings but they actively participated both in the Resident/Principal Magistrate's Court as well as when the matter was transferred to the Meru High Court in 2002. The only time they do not seem to have participated is on 8th October, 2013.

8. In view of the foregoing, this court makes a finding that, there were proceedings in the Meru Resident Magistrate's Court which were later transferred to the Meru High Court, being Succession Cause No. 28 of 1985, relating to the estate of the late Ntuara Amundi. Those proceedings involved extensive litigation whereby, the interest of all the parties concerned were investigated and established and a grant was not only issued but the shares of the respective beneficiaries were identified and the grant confirmed not only by the lower court in or about 18th January, 1996 but re- confirmed by way of rectification on 8th October, 2013 by the High Court.

9. On 24th March, 2014, the Respondents moved the Chuka Principal Magistrate's Court by way of petition for the grant of letters of administration, in the Chuka RM Succession Cause No. 74 of 2014. The court has perused the lower court file. The same shows that the succession cause was in respect of the estate of the late Rintwana Amundi Alias Ntwara Amundi. In the Petition, the Respondents did not disclose when the deceased passed away. In form No. P & A5 the Respondents named themselves as the only ones surviving the deceased. They filed a letter dated 21st June, 2013 from the Chief Mugwe Location which disclosed only six (6) people as the beneficiaries of the estate. These are Fredrick Mate M'Ntuara, Bedford Njue Ntuara, Benson Njagi Ntuara, Gilbert Njeru Jotham and Mati Chabari. Further, both swore an Affidavit on 22nd January, 2014 wherein they stated that the deceased died in or about 1970 and they did not collect the certificate of his death and they sought to be allowed to pursue the succession of his estate without producing a certificate for his death. They disclosed the property known as Karingani/Mugirirwa/520 as the only asset of the estate of the deceased. Pursuant thereto, a grant was issued to the Respondents on 4th July, 2014 which was confirmed on 25th March, 2015 whereby the six (6) beneficiaries named in the chief's letter aforesaid were allocated 2.10 Acres in the estate. I should here note that, in the original file emanating from Meru High Court, an original Certificate of Death No. [Particulars Withheld] dated 15th May, 1986 in respect of the late Ntuara Amunde who died on 10th August, 1972 is shown to have been filed in the Meru Law Courts on 28th March, 1985 as is required by law.

10. From the foregoing, the court makes the following findings:-

- (a) the estate of the late Ntuara Amunge was dealt with by the Resident Magistrate's Court, Meru and thereafter the Meru High Court in these proceedings which were transferred to this court on 28th September, 2015;
- (b) the estate of the deceased that was dealt with in these proceedings constituted the property known as Karingani/Mugirirwa/520;
- (c) a grant was issued in respect of the said estate and confirmed on 28th May, 1996 and reconfirmed by way of rectification by the Meru High Court on 8th October, 2013;

(d) the Respondents commenced and prosecuted Chuka RM Succession Cause No. 74 of 2015 fraudulently by indicating that it related to Rintwara Amundi alias Ntwara Amundi yet it related to the deceased herein, the late Ntuara Amunde;

(e) the Respondents presented a letter dated 21/6/2013 from the Chief of Mugwe location which was misleading as to who the beneficiaries of the deceased were; they were already aware that the Resident Magistrate's Court and High Court, Meru had already identified who the beneficiaries of the estate were;

(f) the Respondents lied that the Certificate of Death for the deceased was never collect yet they must have known that it had been surrendered to the Meru Courts;

(g) they pursued the issuance of the grant for the estate of the deceased and had it confirmed in direct contravention of the decision already made by the High Court, Meru in these proceedings.

(h) the Respondents decided to use their three (3) full names, ie including the baptismal names in the latter Cause probably to camouflage their identity whilst and in these proceedings they used only two (2) names;

(i) the contestations that the High Court Meru had not made any decision on the estate of the deceased is dishonest. In these proceedings, the Respondents filed and prosecuted their Petition by way of Cross-Petition filed on 6th October, 1986 which resulted in their being appointed joint Administrators with the Applicant's mother. They only decided to commence the Chuka RM Succession Cause No. 74 of 2015 when the Meru Courts did not uphold their perceived interests.

11. In view of the foregoing, this court makes the following further findings:-

a). the Chuka RM Succession cause No. 74 of 2015 was commenced in abuse of the court process. The same was res-judicata these proceedings and they cannot stand;

b) the Respondents are not acting in good faith. If they felt aggrieved by the decision of the Resident/Principal Magistrate's Court, Meru, or the High Court Meru, they should have challenged those proceedings in accordance with the law by way of review or appeal instead of commencing fresh proceedings by using different names of the deceased as well as their names as appearing in the Petition filed in the Chuka RM Succession Cause No. 74 of 2015 as opposed to the names they used in their Cross-Petition in these proceedings;

(c) the clan and family meetings that allegedly took place in the Chief's office which allegedly authorized the filing of the Chuka RM Succession Cause No. 74 of 2015 could not and cannot in any way set aside or override the court proceedings undertaken in the Meru Courts. They are nothing but superfluous and a nullity;

(d) these proceedings have been going on now for a very long time. It is now over two one (21) years ever since they were lodged in the Meru resident magistrate's Court. They relate to the estate of a deceased person who passed away in or about 1972; nearly forty five (45) years ago! The earlier they are brought to an end the better. Any party who is not satisfied with the outcome should follow the law or proper procedure in challenging the same.

12. Accordingly, I find the application dated 18th February, 2016 to be meritorious and I allow the same in terms of prayer Nos. 1 and 3 thereof. This being a family dispute, I direct that each party do bear his own costs.

DATED and DELIVERED at Chuka this 9th day of June, 2016

A.MABEYA

JUDGE

Ruling read and delivered in open court in the presence of all parties.

A.MABEYA

JUDGE

9/6/2016