



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 134 OF 2011

IN THE MATTER OF THE ESTATE OF JACOB M'MIRU (DECEASED)

GICOBI JACOB.....1ST APPLICANT

NJAGI JACOB.....2ND APPLICANT

IRERI JACOB (DECEASED).....3RD APPLICANT

KARIUKI JACOB.....4TH APPLICANT

NYAGA JACOB.....5TH APPLICANT

VERSUS

ELIZABETH MUTITU JACOB.....1ST RESPONDENT

JANE MUTHONI JACOB.....2ND RESPONDENT

MARGARET WANJIRU.....3RD RESPONDENT

RULING

1. The applicants seek for revocation of grant in their summons dated 13/10/2016. The grant was made to their mother Elizabeth Mutitu Jacob in the estate of their deceased father Jacob M'Miru on 21/7/2011 and confirmed on 27/11/2014.
2. The grounds relied on are that the 1st respondent assisted by her daughters 2nd and 3rd respondent filed this cause and presented the applicant's land L.R. Ngandori/Kirigi/17 as the asset of the deceased. The applicants states that the deceased did not own any property at the time of his death and it was wrong for the 1st respondent to bring on board the property of the applicants and cause it to be distributed among the family members as per the grant confirmed on 27/11/2014.
3. The application was supported by the affidavit of the 5th applicant Nyaga Jacob. He states that the land in issue Ngandori/Kirigi/17 originated from his father's clan. It was first registered in the name of Jacob M'Miru the deceased on 10th March 1961. About one year later, that is on 11th July 1962, the land was registered in the name of the five (5) applicants who are the sons of the deceased. The applicant must be referring to informal registration in the demarcation register of the clan which were later to be used in formal registration by the Lands office.
4. The 1st respondent states in her replying affidavit that when her husband died, she caused his name to

be removed from the informal register and the names of her five (5) sons the applicant herein inserted. She has a younger son namely Mwaniki Jacob who has no land and wants him to be considered for a share in the family land. When she approached the applicants on sub-division of the land in order to provide for Mwaniki, they refused to co-operate. Together with her 2 daughters (2nd and 3rd respondents), the 1st respondent cautioned the land.

5. It was in the year 2011 that the 1st respondent filed this cause and presented the asset as that of deceased with a view of having it shared among the family members. She opposes the application arguing that her son Mwaniki is entitled to a share in the land. During the distribution, the 1st respondent distributed the land to her six (6) sons. Her daughters are not interested in any share in the land.

6. The parties gave *viva voce* evidence which expounded on what is contained in their respective affidavits. One notable issue in the evidence of the parties was that the younger son of the 1st respondent was born after the death of the deceased. For this reason, the applicants were of the view that the said Mwaniki Jacob is not entitled to inherit from their late father even assuming the land was in the name of the deceased. This is a matter for another day and the court will now proceed to examine the validity of these proceedings in view of these issues raised in this application.

7. It is not in dispute that the 1st respondent filed the succession cause in respect of her late husband and father of the applicants. Neither is it disputed that at the time of his death the deceased had no property registered in his name. The administrator (1st respondent) listed the land registered in the names of the applicants as an asset of the deceased.

8. The official search presented by the administrator during the filing of the case clearly shows that the land is in the joint names of the five applicants. The land was therefore not an asset of the deceased. The 1st respondent misrepresented the facts and circumstances of this cause to the court from the initial stages. It appears that the registry omitted to check the documents presented to them to verify that they were in harmony with the other documents for filing in the case.

9. There was no objection filed against the petition and the 1st respondent was issued with the grant at the expiry of thirty (30) days after gazettelement. She proceeded to distribute the property which did not belong to the deceased among the beneficiaries. The grant was then confirmed on 27/11/2014. The applicants state that they came to know of this cause which had been finalized much later and applied for revocation of the grant.

10. The Law of Succession Act defines “estate” as “the free property of the deceased person”. In this case L.R. Ngandori/Kirigi/17 was not the free property of the deceased. If the deceased had no property registered in his name, it was wrong to file this succession cause. The 1st respondent led to waste of precious judicial time in hearing and determining this case. The judge who confirmed the grant did not note the anomaly in these proceedings which was clear in the official search in comparison with the other documents.

11. The ownership of the land by the applicants is disputed by the other family members. The disgruntled parties especially Mwaniki Jacob ought to have sought a remedy in the Environment and Land court instead of filing the succession cause.

12. The grant purporting to distribute the property of another person other than the deceased is null and void for it has no legal basis. It follows that the entire proceedings and any order made in this cause are also void *ab initio*.

13. For the foregoing reasons, I declare these succession proceedings including the grant confirmed on 27/11/2014 null and void for all intents and purposes.

14. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF NOVEMBER, 2016.

F. MUCHEMI

J U D G E

In the presence of:-

Both parties present