



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 596 OF 1980

IN THE MATTER OF THE ESTATE JOHN MARANGA GWAKO (DECEASED)

PUBLIC TRUSTEE.....PETITIONER/RESPONDENT

VERSUS

ALFRED GWAKO MARANGA

MARK MARANGA

MARGARET MARANGA.....OBJECTORS/APPLICANTS

RULING

PLEADINGS

The deceased John Maranga Gwako died intestate on 4th April, 1973. The estate of the deceased was referred to the Public Trustee on 24th January, 1977. The dues of the deceased were processed from Ministry of Health and received by the Public Trustee in 1980 when he applied for grant of letters of administration to the deceased's estate intestate.

On 20th June, 2014 the Applicants Alfred Gwako Maranga, Mark Maranga and Margaret Maranga filed the application/summons for revocation of grant under **Section 45, 47 and 76 of the Law of Succession Cap 160 Rules 44 (1), 49, 59 and 73 of the Probate and Administration Rules**. The Applicants seek the following orders;

- a) The grant of administration made on 31st May, 1984 be revoked.
- b) The transfer of L.R Nyaribari Chache/B/B/Boburia/3241 from the Public Trustee to the widow Julia Maranga be declared to be irregular
- c) The transfer of the above mentioned land from Julia Maranga to Machogu Davis Maranga be declared irregular
- d) The resulting subdivision of the same land and subsequent transfers to the nine (9) named parties be declared irregular
- i) Rael Otundo

ii) Joseph Moseti Orangi

iii) Cleophas Kebati Ondieki

iv) Margaret Ngina Githinji

v) Robert Osoro Kebande

vi) Geoffrey Gekonde Ratemo

vii) Tom Ochenge Maranga

viii) Moses Obara Oino and

ix) Joash Machui Nyaroo

e) The subsequent registration of the subdivision and transfer be cancelled.

f) The Public Trustee to render accounts in respect of the administration of the estate.

g) The occupation of the new allottees of the subdivided and transferred portions of land from the above mentioned land be declared illegal and the nine (9) new allottees be removed from the land and they should vacate the same.

In the affidavit of Alfred Gwako Maranga, he states that on 1st March, 1985 the Public Trustee obtained the confirmed grant annexed to the Application as **“AGM 2”**

On 16th May, 1986, the Public Trustee was registered as trustee on deceased's Title Nyaribari Chache/B/B/Boburia/3241 as shown in **“AGM3”**

On 22nd May, 1986, The Public Trustee transferred the said land to the widow of the deceased Julia Maranga who was the trustee for the 12 children of the deceased.

On 14th September, 2010 the widow, Julia Maranga transferred L/R Nyaribari Chache/B/B/Boburia/3241 to one Machogu Davis Maranga who is not a beneficiary of the deceased's estate.

Davis Machogo Maranga subdivided the land parcel into nine (9) parcels all allocated them to Rael Otundo, Joseph Moseti Orangi, Cleophas Kebati Ondieki, Margaret Ngina Githinji, Robert Osoro Kebande, Geoffrey Gekonde Ratemo, Tom Ochenge Maranga, Moses Obara Oino and Joash Machui Nyaroo as evidenced by annexure **“AGM 4”**.

The Applicant reported the matter to the Kisii Police Station which resulted in the institution of criminal proceedings against Machogu Davis Maranga in Criminal Case 398 of 2013 Kisii Law Courts.

The Applicant lodged cautions on the said parcel of land forming part of the deceased's estate as shown in annexed **“AGM5”**.

The Applicants are apprehensive that the new allottees will transfer, charge, waste, develop or in any other manner deal with the deceased's estate which is prejudicial to the Applicant's beneficial interest.

ORAL SUBMISSIONS

The matter came for hearing on the 1st time on 21st July, 2014 before Muchelule J. who ordered the application be served on the Public Trustee and they file a Reply and serve and then the matter is listed for directions.

When the matter was scheduled for hearing on 3rd November, 2014 Mr. Ombachi for the applicants informed the Court that the application and hearing notice were served to the Public Trustee's Office. This was confirmed by the Affidavit of service filed on 3rd November, 2014 yet on that day there was no appearance or any information/response.

The matter proceeded exparte with the Applicant's application. The Court adjourned the matter to allow service to the Public Trustee Office for hearing on 24th November, 2014.

On 24th November, 2014, the Court was presented with an affidavit of service to confirm service. Again, the Public Trustee Office did not respond. The Court gave a Ruling date on 19th December, 2014. Mr Ombachi filed list of authorities.

The Court has considered the pleadings filed, oral submissions and list of authorities by Mr. Ombachi for the Applicants.

The petition for letters of administration of the deceased's estate was filed in 1976 and the grant of letters of administration to the Public Trustee was granted on 1981.

The lists of beneficiaries then were;

- 1) Julia Maranga - Widow
- 2) James Maranga - Son
- 3) Mark Maranga - Son
- 4) Mary Maranga - Daughter
- 5) Grace Mranga - Daughter
- 6) Alice Maranga - Daughter
- 7) Margaret Maranga - Daughter
- 8) Kenneth Maranga - Son
- 9) Alfred Maranga - Son
- 10) Flora Maranga - Daughter
- 11) Corky Maranga - Daughter
- 12) Darvin Maranga - Daughter

In the affidavit by Patrick John Kamau Assistant Public Trustee the list of survivors is the same except for Charles Maranga now replaced by Alfred Gwako Maranga.

In the confirmed grant of 1st March, 1984 the list of beneficiaries is slightly different from the 1st list that is in tandem with the 2nd list. This is an issue to be clarified by the attendance and presentation of evidence by the beneficiaries and /or representatives.

The next issue relates to the conduct of the Public Trustee in relation to the estate of the deceased. The Public Trustee transferred the land Nyaribari Chache/B/B/Boburia/3241 to the widow Julia Maranga in trust for the twelve (12) beneficiaries.

Being an old matter it is not clear from the record whether there were consultations, information and consents as to the mode of distribution at this stage. Suffice is to note that the issue ought to be resolved by ordinarily oral and/or documentary evidence. The public trustee declined to attend Court and/or offer any explanation. This remains an issue to be resolved upon the Court obtaining relevant evidence from the parties.

With regard to the transfer of the same land L.R Nyaribari Chache/B/Boburia/3241 by Julia Maranga and transferring the same to one Machogu Davis Maranga; this Court finds from the evidence on record, the Petition, grant of letters of administration and confirmed grant that he is not a child/beneficiary/dependant of the deceased as required under **Section 26, 27 and 29 of Law of Succession Act Cap 160**. Therefore any transfer of the deceased's estate specifically the land in question from the widow to him; and in the absence of any explanation to the beneficiaries' information and consents of the beneficiaries of the deceased's estate can only be deemed irregular and illegal unless an explanation is advanced to the Court to prove he is a beneficiary or dependant of the deceased.

Secondly, the transfer would only be legal/regular if it was done with the knowledge and approval or consent of all beneficiaries. Again such evidence is not available on record.

Therefore to the extent that Nyaribai Chache/B/B/Boburia/3241 is part of the deceased's estate any transfer, subdivision, allotment to Machogu Davis Maranga amounts to meddling with the deceased's estate as prohibited by **Section 45 of Law of Succession Act Cap 160**.

Refer:

1) David Mwiki Mugambi Vs Jesse N. K. Mugambi and 4 others Misc. Appl. 168 Of 2011

2) Grace Kanyi Nyaga Vs Nicholas Njonjo Nyaga 2012 Eklr.

The subsequent subdivisions of the said land to the nine (9) new allottees can only be valid if the transfer to Davis Machogu Maranga is valid.

The Court finds itself in a difficult situation, the application which ought to have been held interparties, proceeded ex parte due to non attendance by the Public Trustee's Office despite service as evidenced by the Court record.

Being an old matter spanning over 20 years this is very scanty information in the Court file to assist the Court as to what transpired in terms of distribution of the deceased's estate. Therefore until the beneficiaries present themselves in Court or through their representative present their evidence in Court and the new allottees arising from the transfer of Julia Maranga to Devis Machoge appear in Court.

FINDINGS

This Court will make the following orders;

1) The certificate of confirmation of grant to the Public Trustee remains in place until further orders are made by this Court.

2) The transfer of Nyaribari Chache/B/B/ Boburia/3241 from Julia Maranga who held the same in trust for the eleven (11) children of the deceased and herself to Davis Machogu Maranga is declared irregular, illegal null and void, his name is not in the list of beneficiaries attached to the confirmed grant by the Court on 1st March, 1984 as required under **Section 66 of Law of Succession Act Cap 160**.

3) The subdivisions of land parcel Title No. Nyaribari Chache/B/B/ Boburia/3241 to 9201,9202,9203,9204,9564,9565, 9565, 9566 and 9567 and subsequent transfers to the nine (9) allottees are stayed and therefore halted until they are able to prove proper title/ownership of the land in Court.

4) The land Nyaribari Chache/B/B/Boburia/3241 to be preserved as part of the estate of the deceased John Maranga Gwako under **Section 45 of Law of Succession Act Cap 160** until final determination of ownership and transfer/subdivision by the new owners and all interested parties by the Court.

5) The Chief Land Registrar and Kisii District Land Registrar to preserve the cautions filed by the applicant on the respective land Nyaribari Chache/B/B/Boburia/3241 and Nyaribari Chache/B/B/Boburia/ 9201, 9202, 9203,9204,9564,9565, 9565, 9566 and 9567 until proof of legal ownership of the said parcels of land by the allottees and beneficiaries of the deceased's estate in this Court and final determination of **Cr. Case 398 of 2013 in Kisii Court,**.

6) The relevant parties, Julia Maranga and/or representative, children of the deceased themselves or representative, Davis Maranga and/or representatives and the nine (9) new allottees of the subdivided and transferred land by themselves and/or representatives to appear in Court on a date to be obtained by the parties in the Registry to determine Legal ownership of the Land in question and obtain final orders from the Court.

READ AND SIGNED AT NAIROBI THIS DAY 29TH OF JANUARY, 2015

Mr. Mohamed holding brief for Mr. Ombachi for the objector.

M. MUIGAI

JUDGE

In the presence of;

Mr. Momanyi for the Objector