



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 207 OF 2009

IN THE MATTER OF THE ESTATE OF HARRY LOUIS NANGURAI– DECEASED

RUTH HELLEN SEMPEYO NANGURAI.....1ST APPLICANT/OBJECTOR

JOHN P. NANGURAI.....2ND APPLICANT/OBJECTOR

VERSUS

ANDREW LOUE NANGURAI.....1ST RESPONDENT

GEORGE M NANGURAI.....2ND RESPONDENT

AND

PESIPESI OLE TUMUTI SUYIANKA.....INTENDED 1ST INTERESTED PARTY

HARRISON MOIPEI OLE TAGO.....INTENDED 2ND INTERESTED PARTY

LETELE NGESE SOYIANKA.....INTENDED 3RD INTERESTED PARTY

PARTORIKO KOPIRTO NENK.....INTENDED 4TH INTERESTED PARTY

JACK RANGOT OLE MUTENTE.....INTENDED 5TH INTERESTED PARTY

JOHN MOSONTU KIONO.....INTENDED 6TH INTERESTED PARTY

KIMAKIA OLE SELELO LEPANOI.....INTENDED 7TH INTERESTED PARTY

HENRY KOPIRATO SHOPOKO.....INTENDED 8TH INTERESTED PARTY

PAITA OLE KIONO OLASHERI.....INTENDED 9TH INTERESTED PARTY

RULING

1. The deceased HARRY LOUIS NANGURAI died intestate on 12th August 1984 at Nairobi, but hailed from Kajiado. He left two parcels of land, namely NGONG/NGONG/289 and NGONG/NGONG/274. On 28th April 2009 a grant of letters of administration intestate was issued to JOHN P. NANGURAI, ANDREW LOUE NANGURAI and GEORGE M. NANGURAI. They are sons of the deceased.

2. On 9th March 2010 a certificate of confirmation of the grant was issued in which JOHN P. NANGURAI got 21 acres of parcel NGONG/NGONG/289, ANDREW LOUE NANGURAI got 20 acres of NGONG/NGONG/289 and 2.5 acres of NGONG/NGONG/274 and GEORGE M. NANGURAI got 16 acres of NGONG/NGONG 289 and 2.5 acres of NGONG/NGONG/274. The parcels were distributed. However, RUTH HELLEN SEMPEYO NANGURAI successfully applied for the revocation of the grant on the basis that she was the daughter of the deceased who had not been informed of the proceedings and had not been provided for in the distribution. Subsequent to that, she was appointed as a joint administrator of the estate along with JOHN P. NANGURAI, ANDREW NANGURAI.

3. On 30th July 2014 the court, by consent of the parties, begun to receive the evidence of RUTH HELLEN SEMBEYO NANGURAI to determine whether she was the daughter of the deceased, and therefore whether she was a beneficiary to the estate. It was while the matter was proceeding that the present application was filed by PESIPESI OLE TUMUTI SUYIANKA, HARRISON MOIPEI OLE TAGO, LETELE NGESE SOYIANKA, PARTORIKO KOSIRATO NENK, JACK RANGOT OLE MUTENTE, JOHN MOSONTU KIONO, KIMAKIA OLE SELELO LEPANOI, HENRY KOPIRATO SHOPOKO and PAITA OLE KIONO OLASHERI who sought to be enjoined into the Cause as interested parties. The application was brought under **Articles 50 and 159(2)(c)** of the Constitution of Kenya 2010, **sections 3A and 63(e)** of the **Civil Procedure Act, Order 1 rule 10** of the **Civil Procedure Rules, Section 3(2)** of the **Judicature Act (Cap 8)** and **Section 64** of the **Law of Succession Act (Cap 160)**. The application was based on the grounds that the interested parties are clan elders of Kaputiei clan of Maasai Community, and that was the clan to which the deceased belonged. They state that the clan has its customary norms and practices that bind its members. Such norms and practices relate to how land is owned, subdivided and bequeathed. They sought that this dispute be referred to traditional dispute resolution mechanism under **Article 159(2)(c)** of the Constitution. Their case was that this out of court mechanism was intended to amicably resolve the dispute as the court mechanism would be long-drawn, traumatic and costly. The other grounds were that:-

“9 THAT the Interested Parties have evidence which will give the Court that correct position of the deceased Estate, the evidence can be given orally in court.

10. THAT the Interested Parties have the knowledge and history of how land was subdivided within the Kaputiei clan of Maasai Customary law and how it was administered over and further content that initially they were the first dispute resolution mechanism.

11. THAT the Intended Interested parties have the knowledge to lead in evidence and clarify to the Court satisfactorily on the way forward, consequently they request for the opportunity to give evidence and give our input on the way forward.”

4. RUTH HELLEN SEMPEYO NANGURAI opposed the application on the basis that the intended interested parties were neither beneficiaries, dependants nor dependants of the estate of the deceased under **sections 26, 27, 28 and 29** of the **Law of Succession Act**; that they were therefore busybodies whose intention was to derail these proceedings that are properly before the Court which has the mandate under **section 47** of the **Act** to resolve it. She feared that the whole intention of their application was to remove the proceedings from the Court and take it to a culture where daughters/girls do not inherit their father’s land. Such a culture would be discriminatory under **Articles 2 and 27** of the Constitution. Her case was that the intended interested parties had colluded with ANDREW LOUE NANGURAI who was the only one opposed to her claim. Indeed, ANDREW LOUE NANGURAI supported the application of the clan-elders. GEORGE M. NANGURAI and JOHN P. NANGURAI opposed the application.

5. Parties filed respective written submissions which I have considered.

6. I have looked at the application and the sworn affidavit by PAITA OLE KIONO OLASHERI in support. None of the intended interested parties claims any part of the estate of the deceased. None of them claims to be a beneficiary or a dependant of the deceased. Instead they stated in paragraphs 7 and 8 of the supporting affidavit that they know the family of the deceased well; they know the number of the wives and children that he left; and that they have valuable evidence that can

“assist the court to determine this matter and end” the litigation. They stated in paragraph 14 of the affidavit as follows:

“14. THAT the Intended Interested Parties have the knowledge to lead in evidence and clarity to the court satisfactorily on the way forward, consequently they request for the opportunity to give evidence and give our input on the way forward.”

7. What the intended interested parties were saying was that they have valuable evidence regarding the family of the deceased which they seek to adduce. Further, they state that they have knowledge regarding the norms and practices of their clan and tribe which they seek to be allowed to lead in evidence. If they testify, they state, the court will have a better understanding of the issues and resolve the dispute in a manner that will do substantial justice to the parties. If that is their case, then the dispute does not have to be surrendered to them, or to any other mechanism. They can be allowed to testify. The Court will weigh their evidence against whatever other evidence that will be led and decide the case. However, the court will make sure that whatever custom or practice on which they lead evidence will not contravene the Bill of Rights; will not be repugnant to justice and morality; and will not be inconsistent with the Constitution, or any written law. Such law includes the **Law of Succession Act**. This is what **Article 159(2) and (3)** of the Constitution is all about.

8. Otherwise, under **Order 1 rule 10(2)** of the **Civil Procedure Rules**, in determining whether or not to join a party to a suit the court will consider whether his presence may be necessary in order to enable it effectively and completely adjudicate upon and settle all questions involved in the suit. **Rule 2** of the Constitution of Kenya (**Protection of Rights and Fundamental Freedoms**) **Practice and Procedure rules, 2003** defines an “interested party” as

“a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”

While the ***Black’s Law Dictionary, 9th Edition*** at Pages 1232 defines an interested party as

“a party who has a recognisable stake (and therefore standing) in a matter.”

I do not think that the intended interested parties have any identifiable stake or legal interest or duty in the dispute so as to be joined in the same.

9. In **MEME V REPUBLIC [2004]IKLR 637** the Court considered other factors that may lead to joinder of a party. They were:-

- (i) joinder of a person because his presence will result in the complete settlement of the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of the party who would otherwise be adversely affected in law; and
- (iii) joinder to prevent a likely course of proliferated litigation.

10. Whichever way one looks at this application dated 27th October 2014, it cannot be granted. The

intended parties can only be witnesses, and an appropriate order can be made for their evidence to be received without the matter being lengthened as it has been in Court since 2009. I dismiss the application with costs.

DATED and DELIVERED at NAIROBI this 20th January 2015.

A.O. MUCHELULE

JUDGE