



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 172 OF 2006

IN THE MATTER OF THE ESTATE OF KIDOGO MUMINA (DECEASED)

JOSEPH NZOMO KITOLO

THERESIA NDULULU KIDOGO PETITIONERS

VERSUS

NGESA NTHEKETHAOBJECTOR/APPLICANT

R U L I N G

1. The application dated 24/5/2008 seeks orders that:-
 1. **THAT the grant of Letters of Administration Intestate made to Joseph Nzomo Kitoko and Theresia Ndululu Kidogo on 24/5/2006 be revoked.**
 2. **THAT a fresh grant of Letters of Administration intestate do issue to both the Applicant, Ngesa Ntheketha, and the Petitioners.**
 3. **THAT costs of this application be paid by the Petitioners.**
2. It is stated in the affidavit in support that the grant was obtained fraudulently by making of false statements and concealment of material facts. That land parcel No. **Mumbuni/Mbiuni/667** does not belong to the deceased as the deceased held the same in trust for the **Ntheketha family**. That the said land was the subject of litigation in **Machakos Land Disputes Tribunal Case No. 99 of 2001** which held in favour of the family. That an appeal lodged at the **Provincial Appeals Committee** confirmed the said decision. That the tribunal's award was confirmed by the **Magistrate's Court** as a judgment of the court. That the said judgment still stands.
3. That by the deceased filed **HCCC 3/04 (Nbi)** in an attempt to have the said Tribunal's decision declared null and void. The case was held to be statute barred. That the deceased was given time to apply to seek leave to file suit out of time. The family of the deceased is yet to substitute him in the said suit. It is further averred that the Land Disputes Tribunal decision in favour of the Applicant is still valid but the position was concealed from the court when the court was petitioned to issue the grant herein. It is further contented that the Applicant and the entire **Ntheketha family** has lived on that land for over sixty (60) years and that the Petitioners have never lived there. According to the Applicant, the Petitioners claim to have sold the land in question yet the grant is yet to be confirmed.
4. The application is opposed. According to the replying affidavit, no information was concealed from this court. It is deponed that the question of ownership of **L.P. No. Mumbuni/Mbiuni/667** was settled by **HCCC Mks No. 69 of 1989**. That the **Mwala Land Disputes Tribunal** did not have jurisdiction to determine the ownership of the said land. That the two rulings both of them purported to emanate from the Tribunal were sent to the court and it turned out that the one in favour of the Applicant was a forgery. That the allegations made to the effect that **HCCC Misc.**

- No. 3 of 2004** was statute barred has not been supported by the annexing of any such order or ruling. It was further averred that the sale of the land in question was effected by the deceased during his life time.
5. The Applicant filed a supplementary affidavit expressing doubts over the authenticity of the copy of the judgment in **HCCC Mks 69 of 1989** which is exhibited herein. The Applicant also exhibited the proceedings in HCCC Nbi No. 3 of 2004.
 6. Directions were given that the application do proceed by way of written submissions. The Respondents filed their submissions but the Applicant did not file any. I have considered the application and the said written submissions.
 7. It is common ground that the parties herein have a simmering land dispute that ended up at the **Land Disputes Tribunal and subsequently went to the High Court as Civil Case No. 3 of 2004 (Nairobi)**. The deceased sought orders *inter alia*, to have the **Land Disputes Tribunal Case** declared null and void. The proceedings in the said case were annexed by the Applicant in the supplementary affidavit. Orders therein dated 8/12/2004 stayed the said proceedings and the proceedings in Magistrate's Court pending the filing of an application for leave to file suit out of time. The last time the case was in court according to the proceedings exhibited herein was on 30/11/2007.
 8. On the other hand, a judgment in **HCCC Mks No. 69/1989** has been exhibited by both parties. In the said suit, one **Kivindu Ntheketha** sued the deceased (**Peter Kitiko Mumina**) for a declaration that the deceased held the title to the suit property (**Mumbuni/Mbiuni/677**) in trust for the said Plaintiff (**Kivindu Ntheketha**) and by extension the Applicant herein and the **Ntheketha family**. According to the copy of the judgment which on the face of it shows it was delivered by the Deputy Registrar on 29/4/1998, the Plaintiff's suit was dismissed with costs. Although the Applicants have expressed doubts on the genuineness of the said judgment, they have strangely annexed the same judgment in their application. If the said judgment is not genuine, then the Applicants ought to have taken steps to regularize the position a long time ago. The judgment is apparently over twenty (20) years old.
 9. On the other hand, we have the Tribunal's decision which has not yet been set aside over twenty (20) years down the line. The Tribunal's decision is in favour of the Applicant. **HCCC Case No. 3/2004 (Nbi)** which was stayed has some pending applications. On the other hand, the judgment in **HCCC Mks 69/89** has a judgment in favour of the Respondent's side. The uncontested affidavit evidence is that the suit property is occupied by the Applicants. What does this portend for the parties? Although there are allegations and counter allegations regarding the genuineness of the two judgments, this court cannot at this stage prefer any of the judgments to the other. This is not a forum to endeavour to set aside the Tribunal's decision or to investigate the genuineness of any of the judgments. Consequently, I will stay the proceedings herein pending the determination of the civil cases between the parties herein.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of March 2015.

B. THURANIRA JADEN

JUDGE