



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

P&A NO.6 OF 2004

BETWEEN

SUSAN WAMBUI NGONDAAPPELLANT

AND

STANLEY MURAGE MWANGI)

JOSEPH MUTHIKE MWANGI)RESPONDENTS

(Appeal against judgment of Hon. J.N. Onyiego, SRM Kerugoya in

Succession Cause No.111 of 2001 delivered on 7th October, 2004)

RULING

By Summons General Form dated 23rd March 2012 the Appellant SUSAN WAMBUI NGONDA sought the following orders:-

1. *The application be certified urgent.*
2. *The court be pleased to issue a prohibitory order on LR NOS.MUTIRA/*
3. *KANGAI/2094, 2095 and 2096 and all those numbers originating from them pending hearing and determination of the application.*
4. *The Honourable Court be pleased to cancel title deed in respect of LR NOS. MUTIRA/KANGAI/2094, 2095 and 2096 and all those numbers originating from them and revert back to its original number LR NO. MUTIRA/KANGAI/194.*

The application was supported by the annexed affidavit of the appellant in which she deponed that being dissatisfied with the decision of the lower court in Succession Cause No.111 of 2001 she filed this appeal whose judgment was delivered on 18th March 2011.

That before the appeal was finalized the respondents moved relevant authorities and caused LR NO. MUTIRA/KANGAI/194 to be subdivided into MUTIRA/KANGAI/2094, 2095, and 2096 and that MUTIRA/

KANGAI/2095 was further divided into 2353, 2354 and 2355 while MUTIRA/KANGAI/2096 was subdivided into 2356 to 2362.

It was further deponed that when the respondents were carrying out the subdivision the appellant was not aware and the same executed judgment of the lower court while the appeal was still pending.

In response to the said application the respondent filed a replying affidavit through STANLEY MURAGE MWANGI wherein he deponed that it is true that the court revoked the grant given by Kerugoya SRM in succession cause No.111 of 2001 and that the only asset of the estate was Land Parcel Number MUTIRA/KANGAI/194 measuring 14 Acres which he had subdivided into three equal portions for each of his three wives.

It was deponed that after the judgment of the lower court, the said Land MUTIRA/KANGAI/194 was subdivided into three (3) equal portions as follows:-

MUTIRA/KANGAI/2094 in the names of SUSAN WAMBUI NGUNDA – Appellant

MUTIRA/KANGAI/2095 – JOSEPH MUTHIKE MWANGI – 2nd Respondent

MUTIRA/KANGAI/2096 – STANLEY MURAGE MWANGI

It was further deponed that subdivision of LR NOS.2095 and 2096 were made out to share out respective shares amongst those entitled from the three houses and that there was no court order stopping subdivision.

The application was certified urgent and prohibitory order granted against any further dealings with the suit property.

SUBMISSIONS

Directions were given that the application be heard by way of written submissions which has now been done. On behalf of the Appellant/

Applicant it was submitted that the court held that the trial court did not have jurisdiction to hear and determine succession cause and proceed to set aside the said grant. It was therefore submitted that in the absence of a valid certificate of confirmation of grant the subdivisions should be cancelled.

On behalf of the respondents it was submitted that the subdivisions were effected as per the wishes of the deceased into three portions to the respective beneficiaries and that the same were effected openly and regularly prior to the revocation of the grant and that in the interest of justice and fair play they should not be disturbed. The respondent further submitted that the present status quo be maintained pending the hearing of the case afresh.

It is not disputed that the appeal was heard by Justice Sergon who in his judgment had this to say:-

“The orders issued on 7th October 2004 are set aside and the certificate of confirmation of grant dated 16th August 2004 is reviewed and set aside. Since the subordinate court did not have the pecuniary jurisdiction to hear and determine the succession cause, all the proceedings and the decision flowing from the proceedings are set aside and substituted with an order striking out the entire petition.” (Emphasis added)

The net effect of the judgment herein is that all the actions taken by the Respondents as a result of the decisions of the magistrate are of no legal consequence whether done in good faith and openly.

I must however point out that it is the Appellant who filed the said succession cause in the Senior Principal Magistrate's court at Kerugoya and taking into account the fact that the original petition was filed in 2001 while the appeal was filed in 2004 and in the interest of substantive justice as required now under **Article 158 (2) (b)** and **(d)** I would allow the application herein by cancelling the subdivisions out of the original LR NO. MUTIRA/KANGAI/194 but maintain status quo as at 2nd June 1999 pending the full final determination of the petition.

In the interest of speedy determination of this case I hereby review the judgment of Justice Sergon in

striking out the entire petition and substitute the same with an order transferring the same to the High Court at Kerugoya for the hearing of an application for confirmation of grant and or protest to the same.

Since this is a family dispute each party shall meet their own cost.

I must on behalf of the judiciary apologize to the parties herein for the delay in determining this judgment which was occasioned by facts beyond the control of the court.

Signed and dated this day of 2015

J. WAKIAGA

JUDGE.

Delivered by Justice J. Ngaah on behalf of Justice J. Wakiaga on 19th day of March, 2015

J. NGAAH

JUDGE.

In the presence of:

----- for Appellant

----- for Respondents