



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCC. CAUSE NO. 40 OF 2014

IN THE MATTER OF THE ESTATE OF JEREMY M' KANGA M' MURIUNGA (DECEASED)

AND

(IN THE MATTER OF CHUKA PMCC SUCCESSION CAUSE NO. 77 OF 2010)

MICHAEL MBAE NJUEOBJECTOR/RESPONDENT

VERSUS

PATRICIAH CIAMBURIA NJUEPETITIONER/APPLICANT

RULING

1. The applicant/petitioner through an application dated 23rd August, 2013 pursuant to Section 70 of the Land Registration Act 2012 and Rule 73 of the Probate and Administration Rules seeks the following orders:-

1. That this honourable court be pleased to order that the inhibitions lodged in respect of land parcel nos. Karingani/Ndagani/4064.4065,4646,5467,4653 and 5967 be removed or lifted.

2. That the costs of this application be borne by the respondent.

3. The applicant's application is premised on the ground on the face of the application inter alia;

a) that the respondent herein obtained ex-parte orders of inhibition on 1st March 2012, inhibiting 7 parcels of land herein from Chuka Senior Principle Magistrate's Court.

b) that out of those parcels that were inhibited one of the parcels LR. No.Karingani/Ndagani/5967 was not subject to the confirmation herein as it is not the property of the deceased.

c) That the Senior Principal Magistrate's court had noted that the court lacked jurisdiction to entertain the matter and ought to have discharged the orders.

d) That the respondent has refused to take steps to expeditiously have the matter

heard and finalized.

4. The applicant's application is further supported by applicant's affidavit dated 23rd August 2013 in which he has deponed as follows; that the certificate of grant was issued to her in respect of her deceased husband's estate on 15th February 2012; that the respondent who is applicant's step-son immediately got ex-parte orders on 1st March 2012 and thereafter inhibition orders in respect of parcels numbers Karingani/Ndagani/4064,4646,5467,4653 and 5967; that the ex parte orders are yet to be confirmed and the respondent has now moved to court for confirmation or otherwise; that on 12th June 2013 this honourable court directed the respondent to file an appropriate application but nothing has been forth coming to date; and that the respondent is out to frustrate the applicant's intention to enjoy her share of inheritance.

5. The respondent is opposed to the applicant's application. He relied on a Replying affidavit dated 12th August 2014 in which he has deponed as follows: that this application is made in bad faith and the applicant filed an application dated 23rd February 2012 in Chuka court seeking to rectify the plot numbers to read 5967 and that is the true and correct number of the deceased's plot as per annexure "MMNI", that the respondent had on numerous occasions fixed case for directions and wrote letters to have the parent file allocated a new High Court number as the Misc. file was spent immediately it called for the Chuka file as per annexure "MMN2" and that it is only just and fair to take direction in the parent High Court file to agree and be directed on the effect of the lower court order dated 6th June 2012 wherein the lower court said after going through the file it lacked jurisdiction.

6. On 15th October 2014 directions were given to the effect that this application be determined by way of written submissions. The applicant's submissions were filed on 7th November 2014 by the firm of M/s. Mbaabu M'noti & Co. Advocates whereas the submissions on behalf of the respondent were filed on 30th March 2015 by the firm of M/s. Mwenda Mwarania & Co. Advocates.

7. I have carefully considered the pleadings, the counsel submissions, directions and proceedings referred to by the parties. The issue for consideration is whether the applicant's application seeking removal or lifting of the inhibition orders made on 1st March 2012 can be granted?

8. The applicant in this application petitioned for the grant of letters of administration in respect of the deceased estate in the Principal Magistrate's Court at Chuka in Succession Cause No. 77 of 2010. The applicant was issued with P & A 4. On 23rd August 2010 and the temporary grant was confirmed on 15th February 2012. The respondent filed an application dated 29th February 2012 seeking orders of confirmation of grant and distribution of the deceased estate issued on 5th February, 2012 be reviewed or otherwise set aside. He sought further that the confirmed grant be cancelled. He also sought for an Order of inhibition on all six (6) parcels of land pending final orders on distribution of the deceased estate. On 1st March 2012 court granted ex parte order of inhibition pending interparties hearing on 8.3.2012. The interim orders were extended and hearing set for 11.4.2012. On 11th April 2012 the interim orders were not extended and on 6th June 2012 court stated that it could not deliver its ruling as the matter was beyond its jurisdiction and directed the parties to seek transfer of the matter to the High Court.

9. I have considered the trial magistrate's proceedings and it's my view that the interim orders issued on 1.3.2012 having not been extended on 11th April 2012 the same lapsed and further more the learned magistrate having noted that the court acted beyond its jurisdiction, it meant all the orders issued by the court were an annuity *ab initio*. Jurisdiction is everything and without jurisdiction the court cannot issue any orders that can be enforced or said to be valid. The court in its order of 6th June 2012 conceded that it acted without jurisdiction and as such any order purportedly issued by the said court was of no legal consequence. It was a nullity.

10. The respondent through an application dated 20th August 2012 sought the Chuka PMCC Succession Cause 71 of 2010 be transferred to the High Court of Kenya at Meru for hearing and determination. The

same was transferred as the lower court lacked jurisdiction. The applicants' application contained only one prayer and when it was granted the application was spent. The only other application filed thereafter is that of the applicant seeking removal or lifting of the inhibition orders issued by court that according to its ruling lacked jurisdiction.

11. I have perused the court file and none of the parties have moved the court to revoke and/or annul the grant issued by the Chuka Principal Magistrate's Court in Succession case no. 77 of 2010 as the lower court had no capacity to deal with the matter by virtue of Rule 44 (i) of the Probate and Administration Rules to revoke or annul grant as such orders are preserve for the High Court only.

12. Having said so much and having considered the parties respective submissions and the provisions of the Law of Succession Act, I am satisfied that the interim orders issued by lower court inhibiting the deceased six (6) properties lapsed by or on 11th April 2012 when the same were not extended. That the trial court also by its own admission, admitted it that it acted without jurisdiction. That according to me meant and means all orders that the court had issued were all null and void. I therefore find no basis for maintaining illegal orders issued by the trial court on 1st March 2012. I therefore make the following orders:-

(a) That the inhibitions lodged in respect of Land Parcel LR No. Karingani/Ndagani/4064, 4065, 4646, 5467, 4653 and 5967 be and are hereby lifted and/or removed.

(b) That the parties are at liberty to apply for appropriate orders as regards grant and confirmed grant issued at Principal Magistrate's Court at Chuka in Succession Cause No. 77 of 2010 to enable completion of administration of the deceased estate herein.

(c) As parties are step-son and step-mother I direct that each party bears its own costs.

DATED at Meru this 17th day of September, 2015.

J.A. MAKAU

JUDGE

17.9.2015

Delivered in open court in the presence of:

Mr. Kimathi holding brief for Mr. Inoti for petitioner

Absent - respondent

Court clerks – Ibrahim/Faith

R.V.P. WENDOH

JUDGE

17.9.2015