



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
PROBATE AND ADMINISTRATION SUCCESSION
CAUSE NO.254 OF 2011

IN THE MATTER OF THE LATE MURINDA JANGAYODECEASED

AND

JOSEPH MUBASA MURINDAPETITIONER/RESPONDENT

VERSUS

PETER MALOBA MURINDAOBJECTOR/APPLICANT

RULING

1. This ruling determines the Objectors Summons dated 18th August 2011 in which the following prayers are sought;

“(a) That the grant of letters of administration to the Petitioner/Respondent herein on the 22nd February, 1995 in respect of the late Murinda Jangayo deceased be revoked and or annulled and all subsequent orders made pursuant to the said grant be set aside.

(b) That a prohibition order be put on the deceased land comprised in title number Marachi/Elukongo/443 or any new parcels created there from pending the hearing and determination of the application herein.

(c) That costs of this summons be provided for by the Petitioner.

2. Some background. Murinda Jangayo (**the Deceased**) died intestate sometime in 1962. At the time of his death he was the owner of land described as Marachi/Elukongo/443 measuring approximately 5.00 acres. That land remains registered in the name of the Deceased todate. Surviving the Deceased were two sons, Joseph Mubasa Murinda (the Petitioner) and Peter Maloba Murinda (the Objector) and a daughter, Nafula Murinda. It is said that Nafula is married.

3. The Petition herein which commenced as Busia SPMCC Succession cause No.127 of 1994 was filed by the Petitioner on 16th August 1994. In the affidavit in support of the Petition he named the Objector and himself as the persons surviving the Deceased. He also named one Francis Odhiambo Obonyo as a purchaser of one (1) acre of the Estate property. The Petitioner was granted Letters of Administration on 27th February 1997.

4. In the objection proceedings which were prosecuted by way of viva voce evidence, the Objector complained that the Petitioner has been reluctant to seek confirmation of the Grant. It was also a

- complaint of the Objector that the Petitioner is interfering with the Objectors portion of land which had long been curved out on the Ground and in the process denied him 1 acre.
5. It was also part of the objection proceedings that the Petitioner had sold (1) acre of his share to Francis Odhiambo Obonyo (Obonyo). This was in 1994. Obonyo, who gave oral testimony, took possession of the land in 1995. He however lost possession of the land in 2011 to the Petitioner who became hostile and chased him away.
 6. In answer to the summons for Revocation, the Petitioner filed an affidavit sworn on 2nd December 2011. Although he concedes that both he and the Objector are entitled to equal shares of the subject land, he says that the Objector sold off 1 acre thereof to a 3rd party. He argues that it is the Objector and not him who is now entitled to 1 ½ acres. As evidence that the Objector had in fact sold off 1 acre, the Petitioner says that he single-handedly refunded the purchase price of ksh.5,000/= to the buyer. He however failed to produce a copy of the agreement said to have been made to capture the refund.
 7. By consent of Counsel for the parties it was agreed and directed that the Summons be disposed of by way of viva voce evidence. At the hearing date only the Applicant and his Counsel were present in Court notwithstanding that the Respondents Counsel had been duly served.
 8. The evidence before me is that the Deceased died intestate in 1962. Surviving him were three children namely the Objector, the Petitioner and Nafula Murinda. Nafula is married and does not seem interested in the Estate. In any event the deceased having died in 1962 the law applying to his Estate would be the written laws and customs applying at the date of his death (Section 2(2) of The Law of Succession Act). The Marachi customs then applying would not entitle a married daughter to inherit her father. So I think.
 9. It is agreed, it seems, that the persons entitled to inherit the deceased's estate are the Objector and the Petitioner. Each is entitled to an equal share of 2 ½ acres. There is also agreed that 1 acre of the land was sold to Obonyo. This is expressly confirmed by the Petitioner in the Petition he filed and the Objector both in his written and oral evidence. A contention is who sold this 1 acre to Obonyo.
 10. Obonyo himself confirmed that it is the Petitioner and not the Objector who sold 1 acre to him. This was not challenged in cross-examination as the Petitioner and his Counsel failed to attend Court. Obonyo also showed to this Court the demand dated 27/09/2010 made by his advocate to the Petitioner. This again is not controverted. Noteworthy is that the Petitioner himself when commencing the Petition acknowledged the sale of 1 acre to Obonyo. For these reasons I am inclined to believe that it is the Petitioner who sold 1 acre of the Estate land to Obonyo. This 1 acre must be recovered from the Petitioner's portion.
 11. The Estate land ought to be divided as follows:

(a) Obonyo – 1 acre

(b) The Petitioner – 1 ½ acres

(c) The Objector – 2 ½ acres

Can the Petitioner be trusted to effect this distribution? I think not. He was granted Letters of Administration in 1995. About 18 years later he has not sought confirmation thereof. This is not a responsible way of administering an estate of a deceased person. A holder of a grant is under an obligation to timeously apply for its confirmation. It is for this reason that a reluctant, lazy or indigent holder can be nudged by the Court vide Section 73 to apply for confirmation. The Section provides:-

“73. The court shall, within one year from the date of any grant of representation, give notice to the holder of the grant to apply for confirmation thereof.”

Another reason for not trusting the Petitioner is that he has attempted to renege on his agreement and promise to transfer 1 acre to Obonyo. For these reasons I allow the application of 18th August 2011 in its entirety. A fresh Grant of Letters of Administration shall issue jointly in the names of the Petitioner and Objector. They must either jointly or separately move the Court within 3 months hereof for confirmation and distribution of the estate in the manner stated above. Costs of the Application to the Objector.

F. TUIYOTT

J U D G E

DATED, SIGNED AND DELIVERED AT BUSIA THIS 23RD DAY OF JANUARY 2014.

IN THE PRESENCE OF:

KADENYI.....COURT CLERK

.....FOR PETITIONER/RESPONDENT

.....OBJECTOR/APPLICANT