



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 1597 OF 2003
IN THE MATTER OF ESTATE OF FRANCIS N. MUCHERU (DECEASED)
PAULINE WANJIKU NDUATI.....APPLICANT
VERSUS
ALICE NJERI NJOROGE
BETH NYAKIO NJOROGE.....DEFENDANTS

RULING

1. The applicant Alice Nyeri Njoroge has brought the application under consideration dated 12/7/08 under Rule 73, Rule 49 of the Probate and Administration rules Cap 160, she seeks the following orders.

- i. That the court be pleased to appoint the Deputy Registrar High court of Kenya to execute conveyance documents in respect of parcel of land known as L. R No. Githunguri /Githiga/1005 so as to effect partition and/or transfer of the said parcel of land to the administrators.
- ii. That the OCS Githunguri Police Station to provide Security.
- iii. That the costs of the application be in the cause.

2. The application is based on the following grounds.

a. The application is supported by the affidavit of Alice Njeri Njoroge. She avers that she is one of the administrators of the estate of Francis N. Mucheru (Deceased) and has been authorized by her co-administrator to swear the affidavit. That their late husband Francis N. Mucheru and the late Gikang'a Gachagwi owned land parcel No. Githunguri/Githiga/1005 as proprietors in common with each holding 200/645 and 445/645 shares respectively. That they have been issued with grant of letters of administration of her late husband. They have also received confirmation of grant and schedule of distribution in the estate of her late husband Francis N. Mucheru.

3. That the administrators of the Late Gikanga Gachagwi have refused and or neglected to pursue the registration of R. L19 and R. L 7 in respect of their share despite being issued with the grant in 1987 and 1989 respectively thus causing inordinate delay in portioning of the aforesaid parcel of land. That they have made the applications to the land Control Board to enable them portion the said parcel of land as the same cannot be granted. That the administrators of Gikanga Gachagwi have refused to sign forms R. L 19

hence this application.

4. The application was opposed. The respondent James Mbugi Gikanga, one of the administrators of the estate of the late Gikanga Gachagwa filed a replying affidavit dated 20/8/08. He avers that the applicant's affidavit is full of falsehoods. That his late father during his life time did not sell any part of the land. Githunguri/Githiga/1005 to the late Francis N. Mucheru. That the 2 did not own the land parcel in common as alleged. That their late father never sold any part of his land amounting to 1 ½ land to the late Francis Mucheru from the original parcel of land known as Githiga/Githunguri/240. That the consent obtained by the late Francis M. Mucheru from the Land Control Board was obtained fraudulently and was registered with his father sharing 445/645 in favor of his late father. That the late Francis N. Mucheru took advantage of his father illiteracy. That when his father realized this he wrote a letter to the registrar of lands. That the applicants never raised any objection. When they were issued with the grant of letters of administration which was later confirmed in 1989. That they have filed suit against Francis Njoroge Mucheru being Civil No. 2963 of 1991 for a declaration that the transaction relating to the sale of the 5 acres of L. R Gathiga/Githunguri/1005 was fraudulent, the suit is still pending and they are in the process of substituting the defendant (deceased) with the legal representative of his estate to mix with Alice Njeri Njoroge and Beth Nyakio Njoroge.

5. The applicant's application is therefore premature and unattainable in the circumstances as there is a dispute as to who actually owns what share Alice Njoroge filed a response to James Mbugua's affidavit stating that the title deed was issued to Francis Mucheru and Gikanga Gachagwa clearly indicating the share each was holding, that they were not issued with any citations nor were they served with succession papers and therefore it cannot be construed that they have no objection. That it is the vendor Gikanga Gachagwi who applied for the consent at the Land control Board. That the letter by Gikanga was a complaint against any illegality.

6. I have considered the averments by the parties in this matter. The applicants did not disclose that there was a case between the late husband and the administrators of the estate. This is wrong. A party coming to court must make all disclosures to enable a court of law make proper decision. Secondly it is clear that there is a civil suit pending over the subject land parcel Githanga/Githunguri/1005 which as deponed is yet to be finalized.

7. It is clear the ownership of the said parcel of land is in dispute. It is only in order that the said suit be heard and determined before any order of execution of conveyance of the documents as sought is granted. I therefore decline to grant the orders sought. The application dated 12/7/08 is dismissed with costs to the respondent.

Dated, signed and delivered this 20th Day of **February** 2014

R. E. OUGO

JUDGE

In the presence of:

.....**Applicant**

.....**Defendants**

Mr. Makori Court Clerk.