



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
SUCCESSION CAUSE NO. 513 OF 1992

IN THE MATTER OF THE ESTATE OF JOSEPH PETER NDUNGU NJUGUNA (DECEASED)

RULING

1. The deceased, Joseph Peter Ndungu Njuguna, died on 21st February 1992. Representation to his estate was obtained on 4th August 1992 by his widow, Nelly Wagio Ndungu Njuguna, and one Stephen Kahura Kariuki.
2. According to the affidavit in support of the petition for grant of letters of administration intestate sworn on 22nd April 1992, the deceased died possessed of, among others, a permanent house on plot No. Muguga/Muguga/152.
3. On 20th April 1993 the administrators moved the court for the confirmation of the grant through an application dated 19th April 1993. The grant was confirmed on 28th May 1993. Among the assets distributed was title number Muguga/Muguga/152.
4. On 24th May 1994, the father of the deceased, Reuben Njuguna Nyumu, moved the court under **Section 76** of the Law of Succession Act for revocation of the grant made on 4th August 1992. The applicant was complaining about the inclusion of his property, Muguga/Muguga/T.152, as part of the deceased's estate. He wanted the property removed from the schedule of the assets of deceased. The respondent/administrator countered that she was only interested in the permanent house standing on Muguga/Muguga/T.152. The applicant claimed both the land and the building.
5. The dispute was heard by Githinji J., who found that the land, Muguga/Muguga/T.152, belonged to the applicant, but the permanent house standing on the said parcel of land was the property of the deceased son of the applicant. Githinji J. ruled on 17th March 1995.
6. It is the said ruling that is the subject of the application dated 17th May 2012, which I am tasked to determine. The applicant, Reuben Njuguna Nyumu, seeks interpretation of the ruling delivered on 17th March 1995.
7. It is not in dispute that the property Muguga/Muguga/T.152 is registered in the name of the applicant, Reuben Njuguna Nyumu, and not the deceased, Joseph Peter Ndungu Njuguna. The permanent house standing on the said parcel of land was however found by Githinji J. to be the property of the deceased. The court came to this conclusion on the evidence placed before it. The position therefore is that the land and the house belonged to the different individuals.
8. The application dated 15th May 2012 was probably informed by the principle in land law that land includes the things fixed to the land. Muguga/Muguga/T.152 was at the time registered under the

Registered Land Act, Cap 300, Laws of Kenya. Section 3 of the said statute defined land as follows:-

“Land includes land covered with water, all things growing on land and buildings and other things permanently affixed to land.”

9. From the definition above it would mean that the permanent house standing on Muguga/Muguga/T. 152 is the property of the registered proprietor of that parcel of land. The decision by Githinji J. was turned on who was responsible for the construction of the building in question. After taking evidence from both sides the court concluded that the structure was built by the deceased.

10. The applicant in the present application appears to be concerned about the fate of the said building given that it stands on his land. This emerges clearly from his alternative prayer, that the respondent be ordered to remove the house from the parcel of land, Muguga/Muguga/T. 152. He appears to wonder what the fate of the said house should be in the circumstances.

11. This is a probate court. The principle jurisdiction of this court is to operationalise the Law of Succession Act. The ultimate goal of the Law of Succession Act is division of the property of a dead person. The issue raised in the instant application has nothing to do with division or distribution of the estate of a dead person, but rather the fate of a house standing on the land of another. Such matters are not for determination by the probate court. The land in question does not belong to the deceased and it is not among the assets that the court is charged with distributing.

12. The dispute regarding the house on Muguga/Muguga/T.152 is a matter for determination by the land court. The applicant ought to have lodged his claim before the land court against the estate of the deceased, asking that court to determine the fate of the building erected on his land by the deceased.

13. The application dated 15th May 2012 is misconceived. I hereby dismiss it with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF May 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Kamweru advocate for the respondent.