

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 63 OF 2014

ELIJAH MAGAL NGURA (Represented by

SELINA CHEPKEMEI ELIJAH) APPLICANT/PLAINTIFF

VERSUS

MANGARIBA MNANGAT LOMUKE RESPONDENT/DEFENDANT

R U L I N G

1. The applicant is the administratrix of the estate of her late husband Elijah Magal Ngura (deceased). The respondent Mangariba Mnangat Lomuke is a brother to the deceased. The deceased was the registered owner of LR NO West Pokot/Keringet "A"/1367. The deceased died on 12/3/1999. The respondent secretly moved to Kitale High Court where he obtained a grant of letters of administrative in respect of the estate of the deceased. The respondent thereafter had the grant confirmed and on that basis he had the deceased's land registered in his name by way of transmission.
2. When the applicant discovered that the respondent had secretly had a grant for letters of administrative in respect of the deceased given to him, she moved and filed an application seeking to have the grant of letters of administration given to the respondent annulled. In a ruling delivered by the High Court on 25/2/2014, the High Court nullified the grant issued to the respondent and advised the applicant to file a suit in the Land and Environment court seeking cancellation of the title given in favour of the respondent as a result of the revoked grant.
3. The applicant moved to the Environment and Land Court and filed a suit seeking nullification of the title issued in favour of the respondent. The respondent filed a defence to the applicant's suit which Defence prompted the applicant to file a notice of motion dated 23/5/2014 in which she seeks to have the defence filed in this suit struck out and summary judgement entered in her favour for recovery of the suit land. The respondent who was duly served with the application never filed any grounds of opposition or replying affidavit. He however appeared before court after the applicant's lawyer had argued the application and went out of the court after a date for ruling had been given to him.
4. The applicant contends that the respondent never appealed against the ruling in which the grant issued to him was revoked. She therefore contends that the defence filed by the respondent is only meant to delay the quick disposal of the case and that the same ought to be struck out and summary judgement entered for the applicant.
5. I have considered the applicant's application as well as the pleadings in this case. I am a live to the fact that dismissal of a pleading is a drastic step which should be given out sparingly and in the clearest of cases. In the present case, the grant which was the basis of the respondent being registered as proprietor of the suit land has already been revoked. There is no appeal which was preferred against the said ruling by the respondent.
6. The respondent is merely stating in his defence that he had intended to sell the suit land to the deceased in 1971 but that the deceased was unable to give 10 cows and 13 sheep for the same and that he decided to recover back the land by way of succession. The suit land was registered in the name of the deceased on 9/4/1984. The law of succession is clear as to the order of priority on

who is to take out letters of administration in respect of a deceased person. Where the deceased's widow is alive as in this case, she was the one to apply for letters of administration and not the respondent who is a brother.

7. If the respondent had any claim over the land, he should have pursued it in the lifetime of the deceased and not wait until the demise of the deceased before starting to secretly commence succession under the pretext that the deceased was not married. I have looked at the ruling of the High Court. The respondent was trying to raise an argument that the applicant was not married to the deceased and that the respondent is the one who permitted the applicant and her daughter to live on the land. What he failed to say is why he was allowing them to stay on the land if they had no relationship with the deceased. I find that this is a clear case where the defence should be struck out. The defence is a sham and it does not raise any triable issues. I allow the applicant's application with costs. The title issued in favour of the respondent is hereby cancelled. The same should revert to the name of the deceased after which the applicant should pursue registration in her name as per the law.

Dated, signed and delivered at Kitale on this 31st July, 2014.

E. OBAGA

JUDGE

In the presence of Mr Kiarie for applicant and the respondent in person. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

31/7/2014