

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 40 OF 2012

IN THE MATTER OF THE ESTATE OF DEDAN MWAURA KIARII (DECEASED)

THUO GICHANE.....APPLICANT

VERSUS

AYUB NJAMBUYA NGURIRA.....RESPONDENT

RULING

The applicant filed in this court a summons in general form, dated 11th December, 2013; it is said to have been brought under **Rule 73 of the Probate and Administration Rules**.

The applicant is seeking this court's order to "cancel and reverse" the registration of Serah Nyambura Njambuya as the owner of land parcel referred to as **Title No. Loc. 17/Saba Saba/T.8** and in her place he be registered as the proprietor of the land.

The application is supported by the affidavit of the applicant sworn on 11th December, 2013 and a further affidavit sworn by the same applicant on 27th March, 2014.

According to the applicant, he was allocated land parcel number **Loc. 17/Saba Saba/T.8** in **Murang'a Senior Principal Magistrate's Court Succession Cause No. 30 of 1987**, in the matter of the estate of Dedan Mwaura alias Dedan Mwaura Kiarri (the deceased).

In support of his claim the applicant annexed to his affidavit a certificate of confirmation of grant dated 22nd January, 1999 showing how the deceased's estate was distributed. According to the certificate, the parcel of land, **Loc. 17/Saba Saba/T.8** which is one of the four parcels that comprised the deceased's intestate estate, was given to the applicant.

Despite having been given this parcel of land, the applicant claims that the land was fraudulently registered in the name of Serah Nyambura Njambuya. It is claimed that the respondent perpetrated this fraud.

There was no response filed by the respondent to answer the applicant's claims. The applicant's counsel filed written submissions asking this court to allow the application.

I have considered the submissions filed by counsel for the applicant.

It is clear that the property in issue was part of an estate of the deceased which was distributed by the magistrate's court in **Succession Cause No. 30 of 1997**. The certificate of confirmation of grant is a clear demonstration that the cause was concluded; the court pronounced the rights of the parties and distributed the intestate estate. All that was left was for the parcels of land to be registered as directed in the certificate of confirmation.

If, either because of fraud on the part of the respondent, the registrar of lands or any other person, the applicant's share was not registered in his name and therefore he has been deprived of his interest in the land, I suppose the forum where those issues can properly be ventilated is not the succession court but the Environment and Land Court which is clothed with jurisdiction to determine, among other things, all

questions concerning title to, occupation and use of land. The succession court has already delivered itself on what it is legally bound to do and as it were it is *functus officio* as far as the succession to the estate of the deceased is concerned. As long as the certificate of confirmation is valid there is no other order this order is bound to issue beyond that which has already been granted.

I am inclined to dismiss the applicant's application dated 11th December, 2013. Costs shall be in the cause.

Dated, signed and delivered in open court this 23rd day of September, 2014

Ngaah Jairus

JUDGE