



Michoma v Michoma & another; Michoma & 5 others (Interested Parties) (Land Case 306 of 2018) [2022] KEELC 15718 (KLR) (21 April 2022) (Judgment)

Neutral citation: [2022] KEELC 15718 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE 306 OF 2018
FM NJOROGE, J
APRIL 21, 2022**

BETWEEN

EVANS EDWARD MICHOMA PLAINTIFF

AND

JAMES MACHUKA MICHOMA 1ST DEFENDANT

THE REGISTRAR OF LANDS NAKURU REGISTRY 2ND DEFENDANT

AND

CLIFF DOCC MICHOMA INTERESTED PARTY

JARED MAKINI MICHOMA INTERESTED PARTY

MACLINE K. MICHOMA INTERESTED PARTY

LYDIA K. MICHOMA INTERESTED PARTY

MARY M. NYATETE INTERESTED PARTY

CAREN K. MICHIRA INTERESTED PARTY

JUDGMENT

1. This is a family dispute. This court has to give a judgment in it since the parties have been unable to agree despite reference of the dispute to court-annexed mediation. This dispute was referred by this court to court annexed mediation but the mediator returned it on the basis of non-co-operation on the defendants' part, observing that the bitterness amongst the siblings is "irredeemable."
2. At the centre of the dispute is the suit property which is admitted by all the parties involved herein to belong to the estate of their late father. However, the suit property was registered in the name of the defendant while the plaintiff's application for the revocation of the confirmation of grant was pending. The plaintiff claims that the 1st defendant's registration as proprietor was fraudulent.



The Plaintiff's Claim.

3. In the plaint dated 31/10/2018 the Plaintiff prays for judgment against the Defendants for:
 1. A mandatory injunction preventing the defendant from transferring alienating subdividing offering for sale, selling or in any way dealing with the property known as Lr No. Nakuru/ boron Settlement Scheme 277
 2. An order directed to the 2nd defendant to cancel the title deed issued on 13th June 2013 to the 1st defendant and revert the property to the estate.
 3. Costs of this suit to be borne by the 1st defendant herein.
4. The plaintiff's claim is that the suit land belongs to the estate of his late father and he, the 1st defendant and the 1st -6th interested parties are all children of the late Stephen Getuno Michoma and beneficiaries to his estate. The 1st defendant obtained a grant of letters of administration which was later revoked at the instance of the plaintiff in 2013. The plaintiff avers that in the course of the hearing in the succession case, the 1st defendant surreptitiously and fraudulently transferred the suit land into his name and obtained title in his name on 13/6/2013; the plaintiff has allegedly learnt that the 1st defendant is in the process of selling the suit land. He avers that he and the interested parties were not informed of the registration of the 1st defendant but came to know of it when they conducted a search on the title. He avers that the estate stands to suffer loss and damage by reason of the alleged fraud of the 1st defendant.

The 1st defendant's defence.

5. The 1st defendant filed a defence dated 19/11/2019. He admitted the plaintiff's claim that he, the plaintiff and the 1st – 6th interested parties and also beneficiaries of the estate of the late Stephen Getuno Michoma and that the 1st defendant had been issued with a confirmation of grant of letters of administration on 15/10/2012; he had listed the mode of distribution of the suit land amongst all the beneficiaries of the estate so as to include the plaintiff; he averred that having followed up with the land authorities and saved the land from the hands of an unscrupulous person who had had himself registered as owner, the 1st defendant was with the knowledge of all the beneficiaries registered as proprietor only by virtue of his then being the administrator of the estate of the deceased; he was willing to have the suit land subdivided as per the agreed acreage among the beneficiaries. The 1st defendant avers that there is currently no grant issued in respect of the estate of the deceased as the only grant that had been issued was revoked in the year 2013. He argues that it is only fair that the land be distributed amongst the beneficiaries without it reverting to the estate of the deceased. He denies that he is in the process of selling the property.

Evidence of the plaintiff

6. This court satisfied that all parties had been served heard the matter on 28/2/2022. The plaintiff testified but none of the defendants or the interested parties gave any evidence in the matter. The plaintiff adopted his statement filed in the matter dated 15/10/2018. The documents that the plaintiff had filed in support of his case were all admitted by consent by the parties without exception. The Plaintiff's evidence is that his late father's estate comprised of several properties one of them being LR NO. NAKURU/BOROM/277 measuring 50 acres; that the High Court sitting in Kisii on 15/10/2012 confirmed a grant issued on the 18/2/2008 in respect of the estate; that the Plaintiff lodged an application seeking to revoke the grant on the basis that it was obtained by means of forgery, fraud and material non-disclosure and the application was granted on 11/7/2013. However, on 13/6/2013



before the grant was revoked the land had been transferred to the 1st Defendant. The Plaintiff averred that the transfer was done secretly. He produced copies of documents listed in his bundle as evidence. These included a certificate of official search dated 16/8/2018, another certificate of search dated 28/8/2018, a ruling of the succession court revoking the grant issued to the 1st Defendant, an order dated 16/7/2013 and a copy of the certificate of the confirmation of grant. From the copy of the certificate of confirmation, it was evident that the distribution of the suit land was as follows:

James M. G Michoma (1st Defendant herein) – 10 acres

Mary M. Nyatete – 5 acres

Curren K Michira -5 acres

Evans E. Michoma (Plaintiff herein) – 5 acres

Cliff D. Michoma – 10 acres

Jared M. Michoma – 5 acres

Macline K. Michoma – 5 acres

Lydia K. Michoma – 5 acres

7. It is clear that all the beneficiaries of the estate of the late Stephen Getuno Michoma stood to benefit if the suit land was to be distributed in accordance with the certificate of confirmation of grant. However, that is now water under the bridge because the grant issued to the 1st defendant was nullified in the instance of the Plaintiff herein and currently it is agreed that the estate has no administrator.
8. In the application for revocation, the Plaintiff herein confirmed the grant had been issued to the 1st Defendant and his mother the latter who had passed on and who had not been replaced. However, the 1st Defendant in reply stated that the decision not to appoint the co-administrator was arrived at during a family meeting in January 2011 and he was to continue administering the estate alone.
9. In its decision in revocation, the succession court noted that the confirmation of grant was based on consent allegedly signed by all the beneficiaries and presented to court by the 1st defendant herein. It stated that the proceedings of 12/10/2012 confirming the grant were not in the file record and that the Plaintiff's evidence was that he had complained to the police that the grant had been confirmed without his participation. The succession court stated as follows in its ruling:

“ 30. In my humble view the grant issued on 12/10/2012 was as a result of concealment of material fact, and it follows that the consent purportedly signed on 6/10/2012 and 12/10/2012 respectively were not signed by the Applicant...”

10. At paragraph 32 of the ruling the court stated as follows:

“ As indicated earlier, there is no record of any proceedings either on 6th or 12th October 2012. Whoever tampered with the court record must have had an ulterior motive. If such a record were available, this court would have known who attend court for the hearing of the summons of confirmation of grant and whether such person(s) was (were) represented by counsel and what the court may have said concerning the matter.”

11. At paragraph 34 of the ruling the court stated as follows:

“ Whereas there may have been no problem with the initial petition for grant of letters of administration in respect of the estate of the deceased, there now appears to be a problem.



Either one, two or more of the beneficiaries of the deceased's estate, is (are) play games for reasons only well known to themselves. It has come out clearly that the grant in this case which included the current plot as part of the deceased's estate was obtained by means of a non-true allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently... I am inclined to agree with the Applicant that the grant ought to be revoked for being tainted with fraud and concealment of material facts. I so order.”

12. It is clear from the foregoing excerpts that there is more than meets the eye that is going on regarding the estate of the deceased. Whatever the case, it is clear that certain steps were taken by the 1st defendant to have the suit land registered in his name while it should not have been so registered. While parties may have agreed on how to share the property of the deceased between themselves, the Law of Succession Act is clear that no party should intermeddle with the property of a deceased person save as provided for in the Act. Therefore, whether all parties will end up being satisfied by the distribution done at the instance of the current registered owner (1st defendant) there will always be some element of fog surrounding the root of the 1st defendant's title. What confusion would ensue for example if later on the successors to the 1st defendant, citing Section 23 of the Land Registration Act as to indefeasibility of title, ever questioned the distribution to the plaintiff and the interested parties of land that was registered in their father's name? at kind of risk is not proper in view of court's deference to valid root of title expressed in various decisions. In the case of Munyu Maina Vs Hiram Gathira Maina 2013 eKLR the court of appeal observed as follows:

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant's testimony.”

13. This judgment should be a signal to land buying companies, the Director of Land Adjudication and Settlement's office and others that may be in a similar position to cause registration of land that the property of a deceased person ought to be preserved for his estate and not be registered in any beneficiary's name without the confirmation of a properly obtained grant of letters of administration.
14. Whether or not a shortcut will lead to the same outcome as the properly prescribed legal procedure, this court has a duty of ensuring that the proper procedures concerning land registration are followed to avert any complications that may arise later on. It may not be very evident as at the moment how deleterious the 1st defendant's conduct can be at present, but this court is aware that shutting the its eye now and sanctioning the irregular registration of the 1st defendant as owner of the land may give the general public the wrong impression that laws do not have to be complied with, which would wreak havoc in the real property sector. Land registration and succession laws were made to be followed and it was done with a reason and this court should not abet their violation or evasion.
15. I am satisfied that the plaintiff has established his claim of fraud against the 1st defendant on a balance of probabilities. No specific allegations of fraud have been established as against the 2nd defendant. It is in the opinion of this court that in the circumstances, the plaintiff's claim has merit.
16. The upshot of the foregoing is that the plaintiff's claim succeeds and I grant it and I issue the plaintiff the following final orders:



1. An order of mandatory injunction restraining the defendants from transferring alienating subdividing offering for sale, selling or in any way dealing with the property known as Lr No. Nakuru/boron Settlement Scheme 277.
2. An order that the 2nd defendant shall cancel the title deed issued on 13th June 2013 to the 1st defendant and register it in the name of the Estate of Stephen Getuno Michoma, (deceased) and thereafter hand over the title to the property to the proper court-appointed administrator to that estate.
3. Each party shall bear their own costs of the suit.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 21ST DAY OF APRIL, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

