



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 432 OF 2013

ATHMAN SALIM MOHAMMED 1ST PETITIONER

WILFRED MULWA KYALO..... 2ND PETITIONER

VERSUS

RESIATO MUNGUTI & NOONGIPA MUNGUTI

Sued as the administrators of the ESTATE OF

SIAMETO OLE MUNGUTI..... 1ST RESPONDENT

SIMON OLE MUNGUTI

Sued as the administrator of the ESTATE OF

NEPURKO MUNGUTI.....2ND RESPONDENT

KESWE OLE NGUTI alias

LEMUNKITI OLE MUNGUTI NAISENEA.....3RD RESPONDENT

MONGA OLE MUNGUTI alias

MOONGA OLE MUNGUTI.....4TH RESPONDENT

MICHAEL SIRONKA MUNGUTI alias

MICHAEL SIRONKA MUNGUTI.....5TH RESPONDENT

KENNEDY PASIMKEI OLE MUNGUTI alias

KENNEY PARSIMEI OLE MUNGUTI.....6TH RESPONDENT

BENSON LEMERIA OLE MUGOT alias

BENSON LEMERIA OLE MUNGUTI.....7TH RESPONDENT

THE REGISTRAR OF LANDS NGONG.....8TH RESPONDENT

THE CHIEF LANDS REGISTRAR9TH RESPONDENT

THE ATTORNEY GENERAL.....10TH RESPONDENT

RULING

In this case, a Preliminary Point of law dated 2/5/13 was raised by the 1st, 3rd, 4th, 5th, 6th and 7th Respondents to the effect that the issues raised herein are set to be adequately addressed next in succession Cause No. 2395 of 2003 where all the beneficiaries together with their surrogates are locked up in the distribution of the estate of Siamento Ole Munguti and this Petition should be referred to that forum instead of multiplying the same.

The brief facts are that Siamento Ole Munguti was the original registered proprietor of the parcel of land known as Ngong/Ngong/27 and upon his demise, the said parcel of land formed part of his estate. In 1978, his widow Nepurko Munguti applied for letters of administration intestate for the administration of his estate in Succession Cause No. 227 of 1980 which letters were granted on 9th December 1980. While holding valid letters of administration, Nepurko Munguti transferred the said parcel of land into his name and subsequently subdivided it into six parcels of land namely:-

- a. Ngong/Ngong/20319
- b. Ngong/Ngong/20320
- c. Ngong/Ngong/20321
- d. Ngong/Ngong/20322
- e. Ngong/Ngong/20323 and
- f. Ngong/Ngong/20324

Thereafter, Nepurko Munguti further subdivided the six parcels of land into several other subdivisions which she then voluntarily and for valuable consideration transferred the same to third parties, including the Petitioners herein. The above interests were registered and title deeds issued in the names of the Petitioners.

Subsequently, Resiatio Munguti and Noongipa Munguti who were Widows of the late Siamento Ole Munguti made an application to the High Court in Nairobi in Succession Cause No. 2365 of 2003 challenging the validity of the letters of administration issued to Nepurko Munguti. A decision was made by Lady Justice Kalpana Rawal revoking the Letters of Administration issued to Nepurko Munguti on the grounds *inter alia* that the same was fraudulently obtained. By this time, the Petitioners had already obtained valid titles from 2nd generation subdivisions of land parcel Ngong/Ngong/27. New Letters of Administration were thereafter issued by the court on 21st July 2004 in the joint names of all three Widows of the deceased namely Nepurko Munguti, Pesiato Munguti and Noongipa Munguti. Thereafter, the 2nd and 3rd Widows applied to the High Court seeking to have the subdivisions resulting from Ngong/Ngong/27 be revoked and redistributed in accordance with the confirmed grant issued on 26th September 2005. The 2nd and 3rd Widow did not enjoin or notify the Petitioners herein of the said application. On 7th August 2009, after hearing the above application, Lady Justice Jean Gacheche ruled that the orders sought could not be granted because the said land parcel had already been subdivided and passed on to third parties who were not parties to the cause. However, on a Chamber Summons application filed subsequently, Lady Justice Roseline Nambuye issued a ruling that all resulting subdivisions of land parcel Ngong/Ngong/27 be collapsed and reverted to the said land parcel number Ngong/Ngong/27 as originally registered. It is this ruling and order which was adverse to the proprietary interests of the Petitioners which led them to file this Petition seeking to have their interest in the subdivisions recognized and protected.

In their submissions, the Objectors contended that this suit should be determined in the pending Succession Cause No. 2395 of 2003 because the subject matter of this petition is the same as the subject matter in the said succession Cause. They further argued that pursuant to section 93 of the Law of Succession Act, this is a matter which was contemplated by that statute which should be determined by

the succession court. He further argued that the Petitioners herein should get enjoined in those proceedings and that bringing this petition before this court constitutes of trying to side step the Law of Succession Act. They further submitted that if this court tries to review the decision of Lady Justice Nambuye as requested by the Petitioners, it would in effect be reviewing the orders of a court of concurrent jurisdiction which is wrong.

Counsel for the Petitioners submitted that the Objectors had not filed a Preliminary Objection properly so called as there was a dispute as to the facts being relied on in the Preliminary Objection. He further submitted that this court has the jurisdiction to determine this petition and that it was not true that the petition constitutes a dispute between beneficiaries of the estate of the Late Siamento Ole Munguti. He further argued that despite the revocation of the Letters of Administration by Lady Justice Nambuye, the transfers to the Petitioner of portions of the land in dispute remain valid for all lawful intents and purposes.

Counsel for the 2nd Respondent supported the position taken by the Petitioners. The 8th, 9th and 10th Respondent took the position that the petition does not disclose any cause of action against them. But supported the Preliminary Objection.

To my mind, there is no question to the fact that this petition was triggered by the Ruling of Roseline Nambuye, J. in Succession Cause No. 2395 of 2003 where she issued an order that all resulting, subdivisions of land parcel No. Ngong/Ngong/27 be collapsed and reverted back to the said land parcel Ngong/Ngong/27. By filing this petition, the Petitioners were seeking to have their titles, emanating from the subdivision of that parcel of land protected against the ruling by Roseline Nambuye, J. It seems to me quite clear that by filing this petition the Petitioners are undoubtedly requesting this court to review the decision of the succession court. This cannot be done.

Section 93 of the Law of Succession Act is the clear relief that the Petitioners should employ which provides as follows:

“A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”

The legal provision affords the Petitioners the protection which they are seeking before this court by their Petition. I therefore direct the Petitioners to seek to be enjoined as parties in the Succession Cause No. 2395 of 2003 and to invoke the cited legal provision therein.

Accordingly, I hereby uphold the Preliminary Objection and dismiss this suit with no order as to costs.

SIGNED AND DELIVERED AT NAIROBI

ON THE 20TH DAY OF SEPTEMBER 2013

MARY M. GITUMBI

JUDGE