



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO.1317 OF 2001

IN THE MATTER OF THE ESTATE OF MWAURA NJUGUNA (DECEASED)

JOHN NJUGUNA MWAURA.....OBJECTOR

VERSUS

SIMON GICHUHI NJUGUNAPETITIONER

R U L I N G

1. The deceased herein, Mwaura Njuguna died on 12th September 1994 and on 20th December 2006, a grant of Letters of Administration was made to one Simon Gichuhi Njuguna, a brother to the deceased.

2. On 21st January 2008, the said Simon Gichuhi Njuguna sought to confirm the grant and proposed distribution of the deceased's estate as follows;

i) Land Parcel No.Ngenda/Kahunguiri/1022 to be transmitted to himself absolutely.

ii) 2 Acres out of the 3 acres comprised in Land Parcel No.Ngenda/Kahunguiri/1027 to be transmitted to himself absolutely.

3. On 6th May 2008, John Njuguna Mwaura, a son of the deceased filed an Affidavit of protest and deponed that the deceased never lawfully sold any land to the Petitioner as alleged and since no Land Control Board consent was obtained, then the remedy available to the Petitioner is a refund of any payments made to the deceased. His proposal is that the Land Parcels in question should be shared out equally between the deceased's surviving children with his wife retaining a life interest.

4. In a Supplementary Affidavit sworn on 23rd June 2008, the Petitioner added the following other matters to his case;

i) That the deceased entered into a Sale Agreement with him in 1964 and a document to show payment of the purchase price as well as the Agreement were exhibited as "SGNI".

ii) That because the deceased refused to transfer the Land to him inspite of payment, the dispute between them culminated in the deceased filing HCCC No.2421/1985 which was later referred to elders for hearing and determination.

iii) That the elders heard the dispute and agreed with the Petitioner that he had purchased the Land from the deceased and that the Land should be transferred to him.

iv) However, that there was an error in the order issued by the elders as it referred to the Petitioner as the Plaintiff instead of Defendant and Bosire J.(as he then was) corrected the order on 18th June 1991.

v) That when the order was extracted, it could not be enforced as the deceased had already sub-divided the land, then known as Ngenda/Kahunguini/895 into Parcels No.1022 and 1027 aforesaid.

vi) That in the meantime, one Erastus Njuguna Kamau had also gone to Court claiming that he had purchased part of the Land and also sought the eviction of the Petitioner. The Suit viz. Gatundu RMCC No.52/1986 was determined in favour of the said person inspite of the earlier orders in HCCC No.2421/1985.

viii) That although he was entitled to only 2 acres of Land, the Petitioner had decided to claim 3 acres so as to enable him to recover costs in HCCC No.2421/1985 and Gatundu RMCC No.52/1986.

5. I have now had occasion to peruse the Submissions by Advocates for the parties and I have noted that in Gatundu RMCC No.52/1986, the Court ordered the present Petitioner to vacate Land Parcel No. Ngenda/Kiganjo/895. It is obvious that the same parcel of Land is also known as Ngenda/Kahunguini/895. I have seen a copy of a Memorandum of Appeal filed by the Petitioner in which those orders are sought to be overturned. The Petitioner would seem to have abandoned any Appeal and instead filed this Succession Cause without first overturning the order vesting the Land on Erastus Njuguna Kamau. The final and last order is that it is the latter who is entitled to the land and not the Petitioner or the Protesters. I say so well aware of the orders in HCCC No.2421/1985 which orders are actually referred to in the draft Memorandum of Appeal against the decision in Gatundu SRMCC No.52/1986.

6. None of the parties to this Cause has seen it fit to enjoin Erastus Njuguna Kamau as an Interested Party yet by Order of Court, the disputed Land has been vested on him. It would be a travesty of justice to proceed and award the Land to either the Petitioner or the Protesters until his voice is heard and his side of the story is challenged by either of the present parties.

7. In the event, I will neither confirm the grant as prayed, neither will I determine the Protests on record but will instead order as follows;

Let the Petitioner, Simon Gichuru Njuguna serve a Notice on Erastus Njuguna Kamau to appear in this Court on a date to be agreed for purposes of filing an Affidavit on record stating his interest, if any on the estate of the deceased herein. Thereafter, the Court can determine the Protests with fairness and finality.

8. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 10th DAY OF FEBRUARY, 2012.

10/2/2012

CORAM

BEFORE LENAOLA – JUDGE

MIRON – COURT CLERK

THE PETITIONER PRESENT

ORDER

RULING DULY READ.

**ISAAC LENAOLA
JUDGE**

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