



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 2622 OF 1999

IN THE MATTER OF THE ESTATE OF MUIRU GIKANGA (DECEASED)

R U L I N G

1. **Mr. P. J. Gakonde Nyagu (the applicant)** applied to this court on 27.7.2011 by way of chamber summons seeking an order to prohibit registration of any dealings in the land known as LIMURU/BIBIRION/1602. He did not give the legal basis for the order he seeks but it seems that his claim is premised on purchaser's interest.
2. In his short affidavit, the applicant averred that he has opposed the grant issued in this cause to **Humphrey Githaiga Muiru, (the administrator)** in the Estate of Muiru Gikanga, deceased. He alleges in his affidavit that the said administrator has put up for sale the land known as Limuru/Bibirion/1602 which constitutes the Estate of the deceased in this cause.
3. He averred that his caution registered against the title to the said land, whose registration dated back to 1986, has now been removed.
4. A Certificate of Official Search dated 12.7.2011 in respect of land Title No.Limuru/Bibirion/1602 shows that the title to the land is now held by Humphrey Githaiga Mwiru as Trustee for the other six beneficiaries who are entitled in equal shares. A copy of the Green Card shows that on 10.2.1986, a caution was registered as entry No.5 in favour of the applicant to protect his purchaser's interest and that on 26.4.1986, a restriction was registered to prohibit dealings with the title in view of the succession proceedings.
5. On 9.8.2011, the Honourable Mr. Justice Ombija issued an order requiring the Land Registrar at Kiambu District Land Registry "to enter a caveat" against the title to the said land. As the land is registered under the provisions of the Registered Land Act, Cap 300, the "caveat" should have read "caution" instead. It was ordered that the "caveat" would be maintained until the determination of these succession proceedings. The extracted formal order seems to have been registered as entry No.11 on 15.8.2011 against the title and this was before registration on 23.07.2002 of the administrator of the estate, Humphrey Githaiga Muiru, as trustee on behalf of the other beneficiaries in the Estate.
6. There is pending for hearing and determination by Humphrey Githaiga Muiru, the administrator, an application made by summons dated 10.10.2011 seeking orders that the ex parte orders made by the Hon. Mr. Justice Ombija be discharged or set aside. The application is supported by the affidavit of the Applicant and is opposed by Peter John Gakonde on the ground that the latter's application dated 9.7.2004 has not been heard and that he has found a buyer for the land. Ostensibly he is under the

impression that it is his land and that he can sell it. He seems to rely on an alleged sale of the land to him by the deceased.

7. The Grant in this succession cause was made to Humphrey Githaiga Muiru on 20th June 2000. It was confirmed on 28th November 2001 and the Estate was distributed to the beneficiaries on the terms that the administrator, Humphrey Githaiga Muiru, would be registered as trustee to hold on his own behalf and on behalf of the other six beneficiaries who are entitled in equal shares.

8. The parties appeared before me on 9th May 2012 when Peter John Gakonde told the court that the summons for revocation of the grant has not been heard yet and that he has sought confirmation of the ex parte orders made by the honourable Justice Ombija on 9.8.2011. On his part the administrator of the Estate relied on his replying affidavit sworn on 29.3.2012. On 9.5.2012, the Applicant filed a further affidavit in which he averred that he is in possession of the land and that he is entitled to it by virtue of his adverse possession since 1985. He urged the court to hear his summons dated 9.7.2004 for revocation of the grant in which he alleges that he bought land title No.Limuru/Bibirion/1602 in 1994 from Francis Mwaniki Muiru and that he has been in possession of it since 1985.

9. It is desirable that the application dated 9.7.2004 is heard and determined on merit.

I decline to issue a prohibitory order which the Applicant, P. J. Gakonde Nyagu has sought in the application dated 27.7.2011 as it would be superfluous. Instead, I direct that

(a) The summons for revocation of the grant dated 9th July 2004 shall be heard and determined on the basis of affidavit evidence and submissions to be made by the parties.

(b) As parties have filed affidavits, Parties shall proceed to file written submissions. The Applicant shall file and serve his submissions within 21 days and the Respondent shall file and serve within 21 days after service on him by the Applicant. Mention shall be on 23rd October 2012.

Dated at Milimani Law Courts, Nairobi, this 28th day of June 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. Peter John Gakonde Applicant in person

Mr. Humphrey Githaiga Muiru – Respondent in person

Mr. Kugwa – Court Clerk