



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Succession Cause 2221 of 2008

IN THE MATTER OF THE JUSTUS NG'ANG'A RIUNGE

RULING

GEORGE ITOTIA NGANGA (the applicant) presented in the registry of this court on 7.8.2009 an application by summons which was not signed. It is liable to be struck out on that ground but as the applicant is a lay person and as the issue involved relates to land and is therefore emotive, I decline to strike it out and instead shall determine it on its merits.

The Respondents in the application are represented by Advocate Kinuthia Mwicigi.

The Applicant seeks orders

“1. THAT the Kiambu Land Registrar be ORDERED to cancel all the titles registered against the original Title No.LIMURU/BIBIRION/876 and the title revert back the name of the deceased JUSTUS NGANGA RIUNGE.

“2.THAT the TITLE NO.LIMURU/BIBIRION/876 be distributed as per the Certificate of Confirmation of Grant dated 27th day of July, 2009 and grant of Letters of Administration with written Will annexed issued on 28th January 2009 which is in accordance with the wishes of deceased's will dated 3rd December 1972.”

In a nutshell, the application shows that the applicant's father, one **Justus Nganga Riunge** died on 16.2.1973 leaving an estate made up of a parcel of land known as Limuru/Bibirion/876 measuring 4.12 hectares. He had two wives who had predeceased him. He was survived by the children in the first House who are the applicant who is the 1st born son of the **first wife** and the applicant's siblings, namely **Messrs Lucy Wahu Boro, Samuel Mhuri Nganga, James Karinge Nganga and Stephen Muniu Nganga** and also by the children in the 2nd house who were **Messrs Mary Wanjiru Kimani, Wangari Kimani and Ruguru Nyoike**.

In brief, the applicant submitted that he was entitled to inherit the land left by his father as he is the first born. His wish was to have the land distributed in accordance with his father's Will which he did not attach to the application and whose contents he did not state. He further submitted that he was not aware of any other succession proceedings relating to the Estate of his father. The Applicant conceded that he had not annexed a copy of the Will he alleged existed but told the court he had done so in his further affidavit filed on 7.6.2010. It was his submission that he was in possession of a Grant of Letters of

Administration intestate which, he said, entitles him to inherit his father's estate as the latter's first born son. Mr. Kinuthia Mwicigi Advocate opposed the application and relied on the affidavits filed by his clients. He termed the application as an abuse of court process.

I have perused the application and the affidavits filed by the parties. I have also considered the submissions made by the Applicant and by advocate Mwicigi Kinuthia. I have also perused the file to acquaint myself with the facts in this matter. The facts emerging show that the Applicant has been very economical with the truth. He has failed to disclose all the facts relating to the Estate of the deceased especially the fact that court proceedings did take place earlier. The record shows that succession proceedings were conducted in Limuru Court in Succession Cause No.3 of 1977 and that the Applicant inherited one acre of land. The deceased's land was subdivided and the original title, No.Limuru/Bibirion/876 was closed. It also emerges that the Applicant attempted to claim the 2 acre piece of land inherited by Salome Nyakirima after she later died. His claim was dismissed. He filed appeal in the Court of Appeal which did not succeed. He also sought review which was also unsuccessful.

After carefully examining the application, I have discerned that the application has no merit whatsoever. I think advocate Mwicigi Kinuthia was right in his submission when he stated that the application amounts to abuse of the court process. I so find.

In the result, I dismiss the application with costs.

Dated at Milimani Law Courts, Nairobi, this 14th day Of June 2012.
G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr.Mwicigi Kinuthia, Advocate, of M. Kinuthia & Co. Advocates for the Respondent

Mr. George I. Nganga, the Applicant in person

Mr. Kugwa – Court Clerk