



REPUBLIC OF KENYA

High Court at Nyeri

Succession Cause 467 of 2009

LUCY WANGECHI NDIRANGU..... DECEASED

AND

PETER MUCHEMI NDIRANGU

SAMUEL MUTHUI NDIRANGU.....PETITIONERS

RULING

This is an application by the Objector/applicant under rule 59(1) and Rule 73 of the Probate and Administration Rules wherein the applicants seeks the following order

- 1. That the registration of the respondents in respect of Tetu/Muthuaini/1434 be nullified and or canceled.***
- 2. That alternatively a prohibitory order be issued to restrain any transactions affecting the said land until this matter is finalised.***
- 3. That the process of succession be resumed to finalise this matter.***

The application is supported by the affidavit of REUBEN IGUANYA KIRUTHU where he deponed that he gathered that the petitioners/respondents had first been registered as proprietors of the said land and that on 14th November 2011 he applied for a certificate of official search which confirmed the said position. That they were not served with the notice of confirmation of the grant which was coming on 4th November 2011.

The application was opposed by the petitioner/respondent through a replying affidavit sworn by peter Muchemi Ndirangu.

Wherein they deponed that the petitioners' mother deceased on 24th June 1987 sued the objectors in Nyeri High court civil case No. 176 of 1987 seeking orders for a declaration that the objectors held land parcel Tetu/Muthuaini/555 in trust for themselves and the deceased.

That on 5th February 1997 the dispute was by consent of both parties referred to arbitration by the D.O. Municipality to be assisted by four elders two to be nominated by each party. The award of the elders was read on 18th June 1997 and the objectors sought to set aside the elders award by an application dated 1st 2nd July 1998 which application was dismissed by J.L.A. Osiemo J on 30th March 1998 and the elders award adopted as judgment of the court.

The objectors filed a notice of appeal against the order of Osiemo which was struck out by the court of

appeal. They subsequently filed civil application No. 85 of 1999 and civil appeal No. 30 of 1989 both of which were dismissed by the court of appeal.

The objectors further filed Nyeri Misc. application No. 176 of 1987 to have the orders reversed which was also dismissed on 17th June 2004.

That the claim thereon in civil case No. 176 of 1987 was duly executed resulting in a sub-division of the Nyeri/Muthuaini/555 into two portions i.e 1434 registered in the names of the deceased and 1435 registered in the names of the objector.

Mr. Macharia Advocate for the applicants submitted that before 24th November 2011 the land was registered in the names of the respondents the same has now since changed hands to Mahanga produce Ltd. He has therefore submitted that the status quo need to be maintained.

On behalf of the respondent Mr. Muthui submitted that the proceedings to cancel the title duly issued should be a civil matter where the Registrar of land should be joined as a party.

I have looked at the pleadings herein and I note that application for confirmation of grant is still pending before this court. If that be the case how then did the respondents get registered as proprietors of the said suit land?

To my mind any registration before confirmation of grant is therefore unlawful and irregular and in view of that I am of the view that the justice of this case demands that I allow the application herein in terms of prayer 2 and issue a prohibitory order restraining any transaction affecting the land known as TETU/MUTHUAINI/1434 pending the determination of the applicant's intended protest to the grant and or cancellation or nullification of the registration of the respondent in respect of Tetu/Muthuaini/1434 with costs being in the cause.

Dated at Nyeri this 6th day of December 2012.

J. WAKIAGA
JUDGE

Mr. Macharia for the applicant.

N/A by the respondent.

J. WAKIAGA
JUDGE