

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO.1138 OF 2007

IN THE MATTER OF THE ESTATE OF SAMUEL MUNYAO NGUKU (DECEASED)

FRANCIS KIMANI KARIUKI.....APPLICANT

VERSUS

KASOLE MAKAU.....1ST RESPONDENT

MONICA MUTONO.....2ND RESPONDENT

J U D G M E N T

Samuel Munyao Nguku (the deceased) died on 19th May 1995. The deceased was the registered owner of the parcel of land known as Kakuzi/Block 11(Gituamba)/177 (*the suit land*) measuring 1.556 hectares (approximately 3.8 acres). According to the succession papers filed before the Thika Senior Principal Magistrate's Court (Succession Cause No.290 of 1997), the deceased died without leaving behind any direct descendant. Kasole Makau (the 1st respondent) petitioned the court to administer the estate of the deceased. In the papers filed in court, the 1st respondent claimed that he was the cousin of the deceased. He also included one Monica Mutono Muri (the 2nd respondent) as a beneficiary of the estate of the deceased. She was described as a buyer (presumably a creditor) of the estate of the deceased. The applicant herein, upon becoming aware that the respondents had applied to be granted letters of administration to administer the estate of the deceased, lodged objection before the said court challenging the claim by the 1st respondent that he was cousin to the deceased and therefore entitled to administer the estate of the deceased. The applicant argued that he had purchased the entire parcel of land from the deceased prior to the death of the deceased. The applicant claimed that he had purchased the suit land from the deceased for a purchase consideration of Kshs.80,000/-. He annexed a copy of the transfer form which he alleged was signed by the deceased prior to his death.

I have perused the said transfer form. It is not dated. There is also an application for consent from the Land Control Board. The same is dated the 27th September 1994. Attached to the consent is a duly approved sub-division plan which divides the suit land into two portions measuring 0.81 hectares (approximately 2 acres) and 0.80 hectares (also approximately 2 acres). According to the said mutation, the suit parcel of land formerly known as parcel No.177 was sub-divided into two (2) portions re-numbered as Nos.341 and 342 respectively. The transfer form that was allegedly signed by the deceased and the application for consent to the Land Control Board is in respect of the sub-divided portion of land number 342. It was the applicant's case before the subordinate court that he had purchased the entire parcel of land from the deceased and therefore the respondents had no right to claim that the suit land belonged to the deceased and was therefore available to be inherited. In the pleadings that the applicant filed before this court, he included another undated transfer form in respect of parcel No.341 which was allegedly signed by the deceased transferring the said parcel of land to him prior of his death.

It appears that the succession dispute was not heard on merits in the subordinate court because the applicant did not file the necessary papers to challenge the application by the respondent seeking to administer the estate of the deceased. The applicant's objection was found to be incompetent and was dismissed. The subordinate court approved the proposal put forward by the 1st respondent that the applicant was only entitled to one (1) acre of the suit land. The applicant was aggrieved by the decision of

the subordinate court. He duly filed an application before this court seeking the revocation or annulment of the grant that was issued to the 1st respondent. The respondents were duly served to attend court during the hearing of the application. They neither entered appearance nor deemed it necessary to file papers in opposition to the application. Their advocate on record in the subordinate court was also served but did not attend court. This court was satisfied that the respondents were duly served. It allowed the applicant to proceed with application, the absence of the respondents notwithstanding.

I have carefully perused the documents that the applicant annexed to the affidavit in support of the application for revocation of grant. The applicant claims that he purchased the entire parcel of land that comprises the suit land from the deceased. He claimed that he even attended to the Land Control Board for the requisite consent to be granted. However, no consent of the Land Control Board was annexed to the affidavit. What was annexed is a copy of the mutation form which confirmed that indeed the deceased sub-divided the suit property into two equal portions of land measuring approximately 2 acres each. The application to the Land Control Board that the applicant seek to rely on in regard to his claim that the deceased sold to him the entire parcel of land relates to the sub-division of the portion of land numbered Kakuzi/Gituamba (Block 2)/342. Having evaluated the said evidence, it was clear to the court that the only portion of land that the applicant established that he purchased from the deceased is the portion of land measuring approximately 2 acres referred to as Parcel No.Kakuzi/Gituamba (Block 2)/342. He is therefore entitled to this portion of land.

In the premises therefore, the order issued by the subordinate court regarding the manner in which the suit parcel of land is to be apportioned between the beneficiaries of the estate of the deceased is hereby set aside and substituted by an order of this court apportioning the said parcel of land between the applicant and the 2nd respondent, Monica Mutono. Each shall inherit approximately 2 acres of land from the parcel of land that was owned by the deceased. In particular, the applicant shall inherit the portion of land that appears in the mutation form as parcel No.Kakuzi/Gituamba/Block 2/342. I hereby revoke the appointment of Kasole Makau (1st respondent) as the administrator of the estate of the deceased. The certificate of confirmation of grant issued on 13th August 1999 to the said 1st respondent is hereby revoked. This court appoints the applicant to be the administrator of the estate of deceased. The grant is confirmed in terms of the findings made by this court. The respondents shall pay the cost of the summons to the applicant.

DATED AT NAIROBI THIS 10TH DAY OF MARCH, 2011

L. KIMARU
JUDGE