



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
SUCCESSION CAUSE 471 OF 2004
IN THE MATTER OF THE ESTATE OF WAINAINA KARANJA (DECEASED)

RULING

KARANJA WAINAINA, ANTHONY KARANJA WAINAINA ('Anthony') and MICHAEL KARANJA WAINAINA ('Michael') are the sons of the late WAINAINA KARANJA ('the deceased'). The deceased who died on 5/9/1975 was also survived by his several wives and children. He owned several immovable properties all situate within Kiambu in the Central Province of Kenya

KARANJA WAINAINA, whom I shall now refer to as 'the objector' claims ownership of KIGANJO/KIGANJO/T.253/19 ('the subject property'), which was registered in the names of MARY NJOKI WAINAINA, VERONICA WAMBUI WAINAINA, LUCY WANJIRU WAINAINA and MARGARET WANJIRU WAINAINA ('the beneficiaries') on 10/1/995 following the confirmation of the Grant herein, issued in favour of Anthony and Michael who are the two administrators of the estate of the deceased. The objector bases his claim on the grounds that having developed the subject property with a hotel, the County Council of Kiambu allocated it to him in the year 1968; and that it was developed with several business premises, which were rented out to several people from time to time.

He also bases his claim on the ground that though he was later given a lease over the same property by the said County Council, it was not until when his tenants declined to pay him the rent in the year 1995, that he realized that his two stepbrothers Anthony and Michael had transferred the property to his stepmothers, without his knowledge or even consent, following their claim that the subject property formed part of his late father's estate.

Anthony and Michael who I shall now refer to as 'the administrators', who were of the view inter alia that this objector should have filed a suit against them for the determination of ownership of the subject property, after which if proved successful he would then seek the orders for revocation/annulment of the Grant, initially raised a preliminary objection to that effect. This court however declined to uphold the said preliminary objection, and the hearing of the objection proceeded to a full hearing by way of the parties adducing viva voce evidence, and having obtained orders to consolidate this suit with H. C. Succession Cause No. 750 of 1986 on 30/6/2004, and on 29/11/04 the parties then agreed that the only issue for determination would be whether the aforementioned subject property was the property of the deceased to be administered by the administrators herein.

The administrators furnished this court with two Kenya Power and Lighting Co. Ltd., ('KPLC") electricity statements, which were dated June and August 1994 and which were issued in the name of the deceased. They also produced two land Rates Certificates for the same property, and while one was

issued in January 1992 in the name of the deceased, the second one was issued in July 2000 in the names of the beneficiaries. This they produced in support of their claim that the property formed part of their father's estate. However, the administrators who did not produced any documents of Title that may have been issued to the deceased in respect of the subject property, were not able to explain how Wainaina Karanja's name appears on both sets of the receipts. There was however ample evidence that the change in names took place long after his death.

Be that as it may, I take cognizance of the fact that the subject property was the subject of an allocation by the Kiambu County Council in September 1977.

I have considered the evidence on record and it would appear that the said allocation was made to Karanja Wainaina who is this objector herein, whose business was described in that letter of Allotment as 'Kiganjo Hotel', which in my view gives credence to his assertions that by the time when the allotment was made he had already developed the plot with a hotel. Evidence on record also shows that the subject property was developed with business premises, which were leased out to several tenant, some of who appeared as witnesses during the trial, although the issue then was who between this objector and his father was their landlord.

I am however convinced that the objector was the allottee of the subject property for there would have been no reason for the details of his driving license (number 6516 (UE-159) to appear on the allotment documents. He also produced evidence by way of a lease agreement dated 1/10/1977 between him and the Land Registrar over the same property and also a Certificate of Lease issued in his favour on 4/12/1978. This is further supported by the relevant Green Card which clearly shows that he is the registered lessees of the subject property from the County Council of Kiambu. It is my humble opinion that nothing would have been easier than for the deceased, if at all the property had been allocated to him, to have it allotted in his name and thereby to give his full identification details.

It is common ground that the subject premises were known as 'Kihui Mwiri', which all are agreed, is the age set of the deceased, but I am nevertheless convinced that not only was the objector that rightful allottee of the subject property, but that he was its registered lessee, and that the administrators went out of their way to ensure that the changes in proprietorship took place without the objector's knowledge or consent with a view to including the property in the inventory of the assets of the deceased, and thereby to deny him his rights of proprietorship.

The two however claim that the objector cannot now be heard because he participated in the various meetings where the issue of the administration and distribution of the estate of the deceased was considered and dealt with. However the pleadings the evidence herein reveals that the subject property did not form part the of the inventory which these administrators filed in court when they initially petitioned for the Letters of Administration, neither was it included in the list of assets to be distributed at the time when the two sought orders for the Confirmation of the Grant. It is therefore possible that though he attended the meetings, which fact he does not deny, there would have been no need to raise any objections as the inventory must appeared to be correct to him and in the circumstances, I would give him the benefit of doubt and find that the administrators' contentions cannot hold any water._

All in all, I find that the objector has proved his case on a balance of probability and has established that he is the registered Lessor of the subject property. He has also demonstrated that the administrators acted fraudulently when they included his property amongst those of the deceased. I do therefore order that the Grant be revoked but only as far as pertains to the subject property which as I have found should not have formed part of the estate of the deceased. I also order the entry in the Register against the subject property in favour of the beneficiaries be rectified accordingly at no cost to him.

He shall otherwise have the costs of this suit.

Dated and delivered at Nairobi this 19th day of May 2009.

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the applicant -

For the administrators/respondents -