



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS**

**Succession Cause 2395 of 2003**

**IN THE MATTER OF THE ESTATE OF SIAMETO OLE MUNGUTI (DECEASED)**

**RULING**

SIAMETO OLE MUNGUTI, who I shall refer to as ‘the deceased’ died on 29/10/1974. He was survived by three widows, namely RESIATO MUNGUTI, alias RESIATO ENE MUNGUTI, NOONGIPAT MUNGUTI, alias KAGUINI SIAMETO MUNGUTI and NEPRUKO SIAMETO MUNGUTI, whose appointment as administrators of his estate was confirmed by this court on 29/9/2005, at which point his estate which comprised of two properties, namely NGONG/NGONG/27 was distributed to seventeen beneficiaries including Nepurko who was to share 16.8 acres of the said property with Sialo Munguti, Simon Murunga Ole Munguti and Longisa Ole Munguti. The said property was thereafter sub-divided into six parcels whose new numbers are NGONG/NGONG/20319, NGONG/NGONG/20320, NGONG/NGONG/20321, NGONG/NGONG/20322, NGONG/NGONG/20323 and NGONG/NGONG/20324.

The three administrators were allowed to sell the second property, NGONG TOWN PLOT No. 32, and to share the sale proceeds equally.

NGONG/NGONG/20321, which comprised of 3.36 hectares was later sub-divided on September 1999 into three parcels namely NGONG/NGONG/23746 (3.06 hectares), NGONG/NGONG/23747 (0.2025 hectares) and NGONG/NGONG/223748 (0.2025 hectares), which are registered in the names of NEPRUKO SIAMETO MUNGUTI, ATHMAN SALIM MOHAMED and WILFRED MULWA respectively. It would be safe to assume that the latter two, whose names do not appear on the list of survivors or beneficiaries, are purchasers of their respective parcels.

Prior to the consolidation of this cause with HCSuccC No. 227/1980 on 1/7/2008, at least seven Judges of this court had handled the causes, in which the parties filed a multiplicity of applications. The parties are now back to court by way of two applications, which are dated 28/11/2005 and 8/5/2009.

In the first application, RESIATO ENE MUNGUTI and NOONGIPAT MUNGUTI seek the following orders:

- *‘That the Land Registrar Kajiado do cancel the transmission of NGONG/NGONG/27 to NEPRUKO SIAMETO MUNGUTI and the resultant sub divisions and or transfer into other names and the same be reversed into the testators names (sic) of SIAMETO OLE MUNGUTI.’*
- *‘That the OCS Ngong do provide security during and supervise the sub-division of NGONG/NGONG/27 and settlement thereon by the beneficiaries as per the Certificate of Confirmation issued by this court.’*

They rely on the grounds that though this court ordered that the ownership of NGONG/NGONG/27, which had been transferred to Nepurko by virtue of a Grant which was later revoked on 21/12/2001 by this court, be reversed to the testator’s name it has yet to be done. Though the application is opposed, I need not emphasize the fact that it follows that once a Grant is revoked all manner of transactions pertaining to the assets of the estate must be reversed and I need not dwell on that issue, but would readily grant the two applicants the orders that they seek, save that the revocation was done after 17 years of the confirmation of the Grant. The respondent deposes that she had already distributed the estate and that

some of the properties have passed to third parties. It would therefore be necessary for the applicants to avail the latest search Certificates for all the parcels to enable this court arrive at a fair decision. They shall avail the said Certificates under cover of a further affidavit within the next 30 days, with leave to the respondent to reply and serve within seven days of service.

Be that as it may and as stated earlier the Grant was confirmed on 26/9/2005 in favour of the three widows. The parties should move the court within the shortest time to have it rectified as NEPURKO has since died.

Having found as I do I will now deal with the second application. Nepurko's son, SIMON OLE MUNGUTI, who took over the matter on her behalf following a consent order of 19/11/2008, in order to enable him pursue her appeal of 14/10/2002, against the decision to revoke the Grant, which she had obtained in her sole name, and that the three widows do petition the court afresh, has filed the second application in which he seeks orders to restrain Elam Auctioneers from disposing of NGONG TOWN PLOT No. 32, which is still registered in his late father's name, pending the hearing and determination of this suit. It is evident that an application to stay these proceedings pending the hearing and determination of the aforementioned appeal was dismissed on 20/7/2006, and though leave to appeal was granted, no appeal has been preferred so far. It is also evident that no similar application was made in the cause in which the grant that had been obtained by Nepurko was revoked, namely, HCSuccC No. 227/1980.

The two respondents concede that they ordered its sale as per the confirmed Grant, for which they cannot be faulted, and in the circumstances, the application by SIMON OLE MUNGUTI cannot lie and I do dismiss it with costs.

Dated and delivered at Nairobi this 7<sup>th</sup> August 2009

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of:

For the two applicants/respondents – Mr. Wati

For the sole respondent/ applicant – Mr. Wetangula