



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 991 of 1990

IN THE MATTER OF THE ESTATE OF CHGE NGAMATE – (DECEASED)

RULING

I have before me a summons for revocation for 10th August, 2006 filed by one Joseph Kamau Gitau *alias* Kamau Jama representing one Mungai Ngamate the real objector herein.

Similar application dated 3rd August, 1993 was previously filed by the said Objector in his own names. That application was withdrawn later on.

Thereafter the said Joseph Kamau along with one George N. Osango thereafter applied to be appointed as guardian ad litem (sic) of the objector, Mungai Ngamate and the court made that order adjudging him as *compos non meritis* on 3rd May, 1999.

Thereafter vide summons dated 10th August, 2006 only Joseph Kamau again applied for revocation of the grant. The summons is supported by his affidavit sworn on 10th August, 2006.

The said Mungai Ngamate appeared before the court when the application was heard and after proper questioning him, I adjudged him capable of representing himself. My reason is that he was aware of the award made by elders which pronounced him the owner of the plot of land and that he also stated that the said award was not on the file. When I informed him that the same is on the file, he understood the same and after satisfying him, that it was so, he was satisfied and stated that the matter should proceed. He also understood all the questions from the court interpreted in Kikuyu language and replied the same appropriately. He was thus substituted as an objector without any opposition.

I may also point out that there is nothing on record to show how the said Joseph Kamau Gitau was related either to the Objector, or to any party in this matter.

In the affidavit in support of the summons for revocation, it is averred that the consent signed by the Objector was voidable as he was not explained the implication of such signature. Moreover, it is averred that the estate property namely parcel number Ngecha/Gathage/T416 was bought by the objector and a dispute as regards its ownership was resolved in favour of the objector. That award was annexed to the affidavit and later on the same was produced on the court record.

The award is worded in English language and is dated 21st November, 1991. The Objector is shown as the complainant and the Administrator with three others as Respondents. Out of three clan members mentioned therein only one of them has purported to sign. There were two public members public members as per contents.

It does show that the Objector was pronounced as the owner of the said land parcel.

I shall have great difficulty in accepting the said document as reliable and legally acceptable one. I am not sure that one clan member and two public members who have barely signed their signatures can write in English. The document does not show a certificate that it was an English translation of the original document written in vernacular language (Kikuyu in this case). It is not even signed by all the clan members who are, in reality, the elders. The original is not before the court.

It is also trite law that decisions made by the elders without the process being initiated by the court are not to be accepted as binding decisions without further evidence.

Paragraph 4 of the affidavit in support also cannot be relied upon, simply on the ground that the averments made therein are hearsay without its source being disclosed. The said paragraph states:

“That when he was made to sign a consent allowing Gachigua Ngamate to administer their late father’s estate, he was not explained of its implication.”

Similar is the position as regards paragraph 9 of the affidavit when it is simply averred that the Objector has refunded money to his brothers. No proof of its refund except the decision of the clan members which is mentioned hereinbefore.

As against these facts, the Administrator has sworn an affidavit in opposition to the Objector’s application on 31st January, 2007.

The most relevant point raised therein is that Mr. Sane, the Learned Counsel for the Objector, himself consented to the grant of application dated 16th January, 2006 which sought to distribute the parcel of land in question (i.e. L.R.Ngenda/Gathage/T416) i.e. to be divided equally amongst, the Administrator, the Objector and one Esther Wanjiku Chege. The application before me was also filed by the firm of Sane and Company Advocates. That order is not challenged and thus the objector has no legs to stand to contest the present application.

I am further fortified by the fact that, the Objector himself filed a civil case at Thika courts being RMCC No/173/92 seeking to transfer the land parcel in question in his names. Perusing the plaint, it is clear that what he is alleging was that the defendant therein (the Administrator before me) was registered as sole proprietor being his brother for safe keeping.

The Administrator lost the said suit and was asked to pay the costs of the said case.

Moreover, the Administrator has conceded that the deceased (who was the eldest brother to the parties) held the parcel in trust for all his brothers including the Objector.

Objector has been given equal shares not only in the land in question but also in land bearing L.R. Ngenda/Gathage/286.

It is trite law that the litigation must come to an end and no litigant be given any assistance to continue doing otherwise.

This is what the objector intends to do and the court has to stop him.

In the premises aforesaid the summons dated 10th August, 2006 be dismissed.

I shall not award costs considering the relationship between the parties.

Dated and signed at Nairobi this 4th day of June, 2008.

K.H. RAWAL

JUDGE

4.6.08