



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 3608 of 2003

**IN THE MATTER OF THE ESTATE OF WALTER KARANJA – (DECEASED)**

**RULING**

The succession cause No.3608 of 2003 was by consent consolidated with H.C.C.S. No.1401 of 2004 on 15<sup>th</sup> December, 2006.

The Plaintiffs in O.S 1401 of 2003 filed an affidavit sworn on 29<sup>th</sup> April, 2003 in opposition to the land parcel No. L.R.10090/23 (referred to as the suit property) to be included in the estate of the deceased Walter Karanja Muigai. He has averred that the deceased herein sold the suit property to them during his life time and thus the same is not a net estate property available for distribution to the beneficiaries.

In the H.C.C.S. No.1401 of 2004 (O.S) the Plaintiff have sought orders that the Administrators of the deceased herein do execute fresh transfer documents of the suit property in favour of the plaintiffs.

The two consolidated matters were heard by way of submissions, once again by consent of parties, on the basis of the affidavits on record.

These submissions were heard and before the same was finalized, the Plaintiffs protestors filed a summons seeking progress for consolidation of suits on 10<sup>th</sup> September, 2008.

Under this application it is prayed that this succession cause as consolidated with H.C.C.S. No.1401 of 2004 (O.S) be consolidated with H.C. Misc. Application No.1277 of 2004 (O.S).

The said cause sought to be consolidated at this stage seeks prayers interalia:

**1. THAT this Honourable Court be pleased to give leave to the Applicants herein, GEOFFREY CHEGE KIRUNDI and LUCY WAMAITHA CHEGE to file suit out of time for an Order that the Respondents herein, being the Legal Administrators for the Estate of the late Walter Karanja Muigai be ordered to execute a fresh Transfer Documents for L.R.No.10090/23 situate in South West of Thika Municipality in favour of the Applicants jointly and in default, the Deputy Registrar of the High Court of Kenya to effect the transfer in favour of the Applicants.**

**2. THAT the period of the earlier application for the Land Control Board's consent dated 16<sup>th</sup> December, 1993 be and is hereby extended and the subsequent Land Control Board's consent issued by the Board on 16<sup>th</sup> December, 1993 for the Sale of L.R. No.10090/23 aforesaid be and is hereby extended and validated respectively.**

**3. THAT in the alternative and without prejudice to prayer (2) herein-above, the Honourable court be pleased to extend time for the application of the Land Control Board's consent for the sale of L.R. No.10090/23 situate in South West of Thika Municipality between the Respondents herein, acting for and on behalf of the Estate of the late WALTER KARANJA MUIGAI as Vendors and GEOFFREY CHEGE KIRUNDI and LUCY WAMAITHA CHEGE as purchasers.**

**4. THAT the costs of this application be in the cause."**

Mr. Kirundi contended that the prayers made in the said application shall be considered to be made in alternative, if this court finds that the consent already issued by the Land Control Board on 16<sup>th</sup> December 1993 in respect of the suit property is not properly issued, as contended by Mr. Musyoka, the learned counsel for the Administrator/Defendant.

Mr. Kirundi contended that this application is made for abundant caution and in the alternative to what is contended in succession cause and originating summons already consolidated by consent. It was stressed that the parties, subject matter and facts in all these three matters are similar. No new facts are averred in the cause sought to be consolidated.

It was further contended that no prejudice shall be suffered to the Administrators/Defendants and that the consolidation shall also avoid multiplicity of the cases. In short it is submitted that the consolidation of all the pending matters is in interest of justice and avoidance of uncalled for delay in finalizing these old matters.

Mr. Musyoka opposed the application, according to him the issue in the two consolidate matters the is to determine the interest of the protestors/Defendant in the suit property and the issue in the cause, sought to be consolidated is the extension of the time prescribed under Section 8 of the Land Control Act (Cap 302).

He added that the cause herein ought to have been heard prior to that hearing of these two matters which is part-heard. According to him it is trite that the application to extend the time caught up by limitation should precede the filing of any substantive proceedings and not vice versa. The application, to consolidate a third cause, according to him, has been made very late in the day and the Administrator should be prejudiced as the submissions are almost finalized.

Reliance was placed on two High Court cases namely Civil Appeal No.557 of 2004 (Menengai Farmers Ltd Vs. Nzomo Muiya) and H.C.C.S. No.1645/01 (Barclays Bank K Ltd Vs. Simon Muruchi Thiga) (both unreported)

I have perused these two authorities, and, with due respect to Mr. Musyoka, cannot find any relevance to the facts of the present applications. I however, do go along with the rationale of these two authorities that when there is no similarity between the two cases, then the only fact the two cases are between the same parties cannot be the basis for consolidation. The court found rightly from the facts before it in both the cases.

In this application, however, I cannot say that there is no similarity between the two cases.

I have perused the pleadings in all the three cases, and I do find that the affidavits in support of all of them are almost identical. The subject matter, the facts on basis of which the claims are made are also similar.

The submissions of the validity of the consent of the Land Control Board issued on 16<sup>th</sup> December, 1993 has been extensively canvassed before me. To avoid going back to the cause seeking extension or deeming it to be duly obtained after determination of the issue already canvassed, shall inevitably result in duplication. Mr. Kirundi has insisted that the prayers made in the cause bearing **Misc Application No.1277/04** shall be in alternative to what is sought for in the two cases.

I do agree with Mr. Musyoka when he submitted that the application has come late in the day, but I also note that the **H.C. Misc. Application No.1277/04** was served to the Administrators personally, to previous Advocate, as well as the present Advocates. No response is yet filed.

Be that as it may, after giving anxious thoughts and due consideration to finalization of this matter, which is spread over the three matters, I do think that to achieve substantive justice, I shall grant the application and do direct this succession cause as consolidated with H.C.C.S. No.1401 of 2004 (O.S) be consolidated with H. C. Misc. Application No.1277/2004 (O.S).

The costs of this application and any resultant proceedings and pleading shall be to the Administrator/Respondent.

The matter be mentioned for directions as to the further hearing on a date fixed on the date of this ruling.

Dated and signed at Nairobi this 25<sup>th</sup> day of November, 2008.

**K.H. RAWAL**

**JUDGE**

**25.11.08**