



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PROBATE & ADMIN. CAUSE 59 OF 1987

IN THE MATTER OF THE ESTATE OF:

NGUSYE MBOLE

NGINA MBOLE

MWIKALI MBOLE :::::::::::::::::::::DECEASED

RULING

1. A procedural mistake was committed way back in 1987 when the Registry opened one file in respect of three different deceased persons namely Ngusye Mbole, Mwikali Mbole and Ngina Mbole . At that time only one petitioner was on record namely Moses Mwangili Mbole. A grant of letters of Administration was in any event issued to the said person on 22..6.1999 and I note as follows:-

- i. Ngusye Mbole, Ngina Mbole and Mwikali Mbole died in 1910, 1940 and 1936 respectively.
- ii. The three deceased persons were all co-wives and Ngusye Mbole was the mother of Moses Mwangili Mbole
- iii. That Moses Mwangili Mbole died on 12.6.1991 and his sons Mwaluko Mwangili and Daniel Mwangili applied to be substituted in his place as Administrators in the Cause and the order was granted by *Mwera,J.* on 6.3.1998.
- iv. The new Administrators sought to confirm the grant by their Application dated 8.9.2003 and their proposal was that the land

comprised in the estates of the three deceased persons be inherited as follows:-

- a. Mwala/Maau Eli/337 by Daniel Ndaka Mwangili
- b. Mwala/Maau Eli/338 by Simon Mwaluko Mwangili
- c. Mwala/Kyawango/263-jointly by Daniel Ndaka Mwangili and Simon Mwaluko Mwangili in equal shares.

2. Before the grant could be issued, one Johnson Mutuku Nzioki raised what he called an “**objection**” to the confirmation of grant and claimed that he was also entitled to the land parcels left behind by the deceased persons.

3. On 21.7.2004, one Katua Mboka also swore an Affidavit and claimed to have a prior right to title

No. 337 aforesaid.

4. On 8.4.2005 **Wendoh ,J.** issued another grant in respect of the same three estates by consent of parties and the Administrators were Daniel Mwangili, Mwaluko Mwangili, Katua Mboka and Johnson Mutuku Nzioki. On 20.5.2005 parties further consented to arbitration by the Aombe Division Clan Chairman and one Mwalimu Mwaniki was asked to present his claim to that arbitrator. The award was forwarded to this

court on 30.3.2006 but it was in the Kikamba language and inspite of orders to have it translated, it remains on record in its original language.

However in his Affidavit sworn on 26.6.2007, Mwaluko Mwangili at paragraphs 5 and 6 thereof depones as follows:-

“5. that the award has been filed with court showing the scheme

of distribution and we are seeking the confirmation of the award save for substitution of deceased with proper parties and that parties be at liberty to take surveyor to the site for subdivision and allocation of new numbers to portions that shall be indicated as show below.

6. that the portions were given as follows:-

a. House of Mwangili (deceased)

From Wamunyu/Kyawango 263 and 264

1142’ x 338 x 1612x 168’ which house of Mwangili have agreed to be registered in the name of Gedion Wambua Muthengi, a purchaser.

b. House of Kimuu

From Wamunyu/Kyawango/263/265

676’x 338’ x 1612x 676 to which our advocates have advised us that the advocate of the interested Party M/S Nduva Kitonga & Company Advocates have requested

that the portion within Wamunyu/Kyawango/263 and 265 to be measured and registered in the names of;-

i. Mwaluki Mwangili

ii. Musyoki Kyule

iii. Sammy Mutua Kyula

c. That portion from Mwala/Maau Eli /337 to be measured as given and be given to:-

i. David Musyoki Kiseli

ii. Raphael Ngei Mutiku

(see attached letter of Nduva Kitonga & Company Advocates dated 17.1.2007 marked ‘JAM 1’.)”

5. Johnstone Mutuku Nzioki in his Affidavit sworn on 28.4.2007 states as follows at paragraph 4,5,6 and 7 ;-

“4. That the distribution made by the clan was agreeable to

all the parties involved and judgment on distribution was made on 29.11.2007 in terms of the award of the clan.

5. That land parcel no. Mwala/Mauu-Eli/337 and which is

still registered in the names of Ngusye Mbole (deceased) was awarded to the members of the families of Musembi Mbole and Mulavu Mbole as the beneficiaries of the deceased.

6. That all the beneficiaries of the estate of Ngusye Mbole

have agreed that land parcel No. Mala/Mauu/Eli/337 be registered in whole to Raphael Ngei Mutiku.

(annexed hereto is a copy of the certificate of official search).

7. That there is no dispute on the distribution of the estate of

Ngusye Mbole which comprised of the said parcel of land.”

6. From all the above matters it seems to me that parties must abide by the award of the arbitrator. I say this because on 29.11.2007 parties appeared before *Sitati, J* and “**judgment**” was entered “**as per the arbitrator’s award dated 19.9.2005 and filed in court on 30.3.2006.**” That “**judgment**” of this court has neither been set aside nor vacated. Any attempt by me to otherwise tamper with the award or the orders of *Sitati, J.* would be illegal.

7. In the event distribution shall be as per the award which I order the Deputy Registrar to have translated into English and the grant herein confirmed in its terms.

8. Costs shall be in the cause.

9. Orders accordingly.

Dated and delivered at Machakos this **11th** day of **November 2008.**

Isaac Lenaola

Judge

In the presence of : Mr. Mr. Mutua for Petitioners

Mr. Kitonga for Interested Party

Isaac Lenaola

Judge