



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 431 of 2006

IN THE MATTER OF THE ESTATE OF M'IKIARA M'RITHA (DECEASED)

SARAFINA NCHOORO M'IKIARAPETITIONER/APPLICANT

VERSUS

SABINA NCHABIRA M'MUTUNGA RESPONDENT

RULING

1. The Applicant, Sarafina Nchooro M'Ikiara by her summons dated 5.12.2005 seeks orders as follows:

“i) That this honourable court do issue an order of inhibition inhibiting all dealings over Land reference No. NKUENE/L-MIKUMBUNE/1061 or the resultant parcels of land directed to the Land Registrar Meru Central District, pending the hearing and determination of this Succession Cause.

(ii) This honourable court do order the Respondent, her agents, servants, workers and/or assigns not [to] intermeddle or in any way interfere with Land Parcel No. NO. NKUENE/L.MIKUMBUNE/1061 or the resultant parcels there from pending the hearing and determination of this succession cause.

iii) This honourable court be pleased to issue such further or better orders as will meet the ends of justice.

iv) Costs of this application be borne by the Respondent”.

2. The grounds as set out are that:

a) The deceased died on 5.9.2005.

b) Without a grant of letters of Administration and purporting to enforce a decree in Meru **CMCC LDT 31/04**, the Respondent has caused mutation forms to be drawn over LR. NKUENE/L.MIKUMBUNE/1061 and is in the process of having the same registered with the Lands Registry, Meru Central District.

c) That this is clearly an act of intermeddling with the Estate of the deceased.

3. In the Supporting Affidavit sworn on 5.12.2005, the Applicant depones that one M'Ikiara M'Ritha was her husband and that he died on 5.9.2005. That the Respondent and the deceased were parties to a land dispute before the Meru Central Land Disputes Tribunal (LDT No. 31/2004) and that on 19.10.2004 the Tribunal ordered that the Respondent should get one (1) acre out of land parcel number Nkuene/Mikumbune/1061 registered in the deceased's name. It was her argument that whereas the deceased had no objection to the Respondent having one (1) acre of his land (he had sold it to her), he had a problem with the exact part of the land which the Respondent was demanding. That after the death of her husband, the Respondent decided to amend the mutation forms and in the process interfering with the estate so as to affect the rights of another purchaser, Martha Mugure who had bought a quarter acre out of the same land.
4. The Applicant is seeking orders to stop any interference with the suit land until the cause herein is finalized and all beneficiaries to the estate property identified and their interests equally identified.
5. In her Replying Affidavit, the Respondent while admitting the history of the dispute, nonetheless argues that the present Succession Cause is merely a ruse to delay her interests to one (1) acre out of the deceased's land because she obtained a valid and lawful judgment in LDT case No. 31/2004 which should not be interfered with, including by any orders made in the present Succession Cause.
6. From the above, it cannot be denied that the Respondent is entitled to one (1) acre out of parcel number Nkuene/L.Mikumbune/1061. Her entitlement to it arose before the death of the deceased. In fact in an Affidavit sworn on 15.4.2005, the deceased admitted as much and also deponed that another purchaser, Martha Mugure was entitled to 0.25 acres of the same land. The deceased like the Applicant, took issue with the Respondent for attempting to have one (1) acre excised from a portion of the land reserved for Martha Mugure aforesaid and the deceased's daughter, Grace Wanja as well as one, Franklin Mugambi. He deponed then as follows:-

“It is now all too clear that the Respondent just wants to slice up my land as she desires, and I believe, with a view to selling whatever she gets.”

7. The Applicant has invoked s.45 of the Law of Succession Act which provides as follows:-

(i) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall for any purpose, take possession of, dispose of, or otherwise intermeddle with, any free property of a deceased person.

(ii) Any person who contravenes the provisions of this section shall-

(a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) Be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in due course of administration.

“Free property” In relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death:”

8. Since one (1) acre out of the deceased's land parcel number Nkuene/L.Mikumbune/1061 was adjudged by the Chief Magistrate's Court in CMCC LDT NO. 31/2004 to belong to the Respondent, it follows that the same one (1) acre was not free property and was not available for distribution under the Law of Succession Act and it also follows that the Respondent to that extent cannot be said to have intermeddled with the estate contrary to s.45 aforesaid. But that is the

easier part of the dispute; there is the question of where exactly the one (1) acre falls within the deceased's land. On this point the Respondent has not given her version of the story; I say so because she has not responded to the contention earlier made by the deceased and now by the Applicant that she is intent on excising one(1) acre of the deceased's land but not on the portion agreed with the deceased. Without any clear answer on her part, then I am left only with this version and Prima facie where she goes out of one area to which she is lawfully entitled to and invades another which she is not entitled to, then that conduct amounts to intermeddling with the estate. I say this guardedly because the matter cannot be determined conclusively on the basis of affidavits only.

9. So that no more disorder is perpetuated in respect of this estate and to secure all parties, I shall allow prayer 2 and 3 of the Application dated 5.12.2005 but so that the Respondents entitlement is quickly resolved I shall order parties to bring forth evidence by a manner to be agreed to determine one question; what portion (being one (1) acre) of L.R. No. Nkuene/L. Mikumubune/1061) is the Respondent entitled to?

10. Orders accordingly.

Dated signed and delivered in open court at Meru this 28th day of June 2007

ISAAC LENAOLA

JUDGE

In presence of

Mr. Mwanzia Advocate for Petitioner/Applicant

Mr. Gituma Advocate for Respondent

Isaac lenaola

JUDGE.