



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1158 OF 1997 (O.S)

JOHN NGWASI KIHUHA PLAINTIFF

VERSUS

AMON MUTIRU DEFENDANT

J U D G E M E N T

This suit was brought by way of an Originating Summons under Section 3(A) of the Civil Procedure Act (Cap.21) and Order XXXVI Rule 1(c) and (g) of the Civil Procedure Rules in which the applicant John Ngwasi Kihuha for himself and for/and on behalf of his brother Stephen Njuguna and sisters Lizzie Njeri and Mary Wambui claim to be entitled to the Land comprised:-

"(i) Plot L.R No. KIKUYU/9965 and

(ii) Plot L.N. No. KIKUYU/137 and other movables being the estate of SAMUEL KIHUHIA NGWASI (Deceased) for the following orders:-

1. THAT the Respondent being an administrator of the said estate be ordered to render to this Honourable Court, a true account of the estate.
2. THAT the Applicant his brother and sisters being adults, be allowed to take over the management of their father's estate.
3. THAT the estate be distributed to the beneficiaries.
4. THAT the District Land Registrar enter in his register the said substitution under Section 125 of the Registered Land Act (Cap.300)
5. The costs of this application be provided for".

The dispute herein is between the applicant John Ngwasi Kihuha and the respondent Amon Mutiru who is a brother to the applicant's late father. Hence here the applicant has sued his uncle. The applicant gave evidence to the effect that his father died in 1968 while he (applicant) was only six years old. After the death of his father the powers to administer his estate were granted to the respondent. According to the applicant his father left behind two parcels of land L.R 9963 and L.R 9965 both situated in Kikuyu. The applicant produced a copy of the grant showing schedule of property. This was produced as Exhibit 1. Then there was a plot known as No. 137 Kikuyu Township which was jointly owned by the respondent and the applicant's father. The applicant stated that he and his brother and sisters were settled in L.R 9963 and this was through the efforts of local administration. Then there was a vehicle registration number KTB 128 which belonged to the deceased but the applicant does not know what happened to it; only that

it was transferred to a third party.

According to the applicant the two parcels of land - L.R No. 9963 and L.R No. 9965 belonged to his later father but as the administration of his late father's estate was abused he is now seeking the orders prayed for in this Originating SummoTnhse. respondent in his evidence stated that the late Samuel Kihuha Ngwacha (the father of the applicant) was his younger brother who died in September, 1968. The respondent being the Chairman of Divisional Area Council in Kikuyu had contacts which enabled him to approach one Major Luca Packers who agreed to sell him two pieces of land - No.9965 and No. 9963. His late brother bought No.9963 while respondent bought No. 9965. Since each of them paid the full purchase price the parcels of land were transferred into their respective names. These land transactions were handled by the firm of Hamilton Harrison & Mathews Advocates. When the deceased died the title for L.R No.9963 had been issued to him.

The respondent explained how he administered the estate of his later brother by transferring L.R No. 9963 to the applicant. The respondent then sold his parcel L.R No. 9965 to one John Kiriku. As regard the vehicle registration number KBT 128, this was taken by the maternal grandfather of the applicant as part of the dowry which the deceased had not paid.

As regards Plot No. 137 Kikuyu Township the respondent testified that this was jointly owned by him and the deceased. There was accumulated land rent on this plot and as a result one Moses Mwatha paid the accumulated rent and took over the plot.

Having considered the evidence adduced and the affidavits filed herein together with brief written submissions I find that this is a family dispute between the applicant John Ngwasi Kihuha and his uncle Amon Matiru. Most of the facts are simple and straightforward. The father of the applicant died in September, 1968 when the applicant was only six years old. There were two parcels of land L.R No. 9963 and L.R No. 9965. According to the respondent, he faithfully administered the estate of his later brother by transferring L.R No.9963 to the applicant. As regards L.R No.9965 this belonged to the respondent who later sold it to John Kiriko.

In this case, the applicant is seeking orders in respect of the parcel of land No. 9965 and Plot L.R No. Kikuyu/137 and rendering of accounts for the estate of his late father. The respondent on the other hand has explained how he administered the estate of his late brother (the applicant's father). There were two parcels of land which the respondent managed to get and parcel No.9963 was bought by the deceased. This parcel was transferred to the applicant. I would assume that the applicant was so registered as a trustee for his own benefit and that of his brother Njuguna. As regards the other parcel of land L.R No.9965, this belonged to the respondent and he sold it to John Kiriko. The plot No. Kikuyu/137 was taken by one Mwatha who paid rates and annexed to the affidavit of the respondent is a copy of plaint filed by the Commissioner of Lands against the respondent and the deceased in respect of this plot.

As regards the car which the deceased owned, it has been explained how it was taken by the maternal grandfather of the applicant.

In this case, it must be noted that the applicant was only six years old when his father died. Hence the evidence of the applicant is derived from what he was told by other people. Having seen and heard the respondent give evidence, I was satisfied that this was an honest straightforward person who administered the estate of his late brother in a proper manner.

In the written submission by the applicant's counsel, an attempt was made to portray the respondent as a dishonest fraudulent person. In my view, there is no iota of evidence to suggest that the respondent was dishonest.

Having considered all the evidence adduced and the supporting affidavits, I find that the respondent faithfully administered the estate of his late brother. The applicant got what was his rightful share. I find no evidence of intermeddling.

The upshot of the foregoing is that, the applicant's prayers cannot be granted as the suit was brought without any justification. The explanation given by the respondent was fairly honest and straightforward. The applicant should be satisfied with what he got. Consequently, this suit is dismissed. As this is a dispute involving members of the same family, I would order each party to bear its own costs. Order accordingly.

Dated and delivered at Nairobi this 26th day of May, 2000.

E. O. O'KUBASU

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JUDGE OF APPEAL