



REPUBLIC OF KENYA



**In re Estate of Francis N. Mucheru (Deceased) (Succession Cause
1597 of 2003) [2023] KEHC 3293 (KLR) (Family) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 3293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1597 OF 2003

EKO OGOLA, J

JANUARY 16, 2023

**IN THE MATTER OF THE ESTATE OF FRANCIS N.
MUCHERU (DECEASED)**

BETWEEN

ALICE NJERI NJOROGE APPLICANT

AND

JACKSON KAGECHE GIKANG'A RESPONDENT

RULING

1. The Application before me is dated March 7, 2019 and filed on the same date by the Applicant who is one of the administrators of the estate of the deceased, the late Francis N Mucheru. The Application prays for the following Orders:-
 - a. Spent;
 - b. That this honorable Court be pleased to give an Order appointing the Deputy Registrar of the High Court of Kenya, Family Division to sign from Nos RL 19 and RL 7 in place of the Administrators of the estate of Gikanga Gachagwi.
 - c. That the cost of this application be provided for.
2. It is based on the grounds therein and the Supporting Affidavit of Alice Njeri Njoroge. She deposed that her late husband Mucheru owned a parcel of land known as LR No Githunguri/ Githiga/1005 as proprietors in common with Gachagwi and they each held 200/645 and 445/645 shares respectively. The deponent averred that she was issued with Letters of Administration of the



estate and consequently had the Grant confirmed and the estate of the late Mucheru distributed accordingly.

3. However, the Administrators of the estate of the late Gachagwi claim that RL 19 and RL 7 are subject to a suit in the Environment and Land Court, ELC No 848 of 2016. Therefore, they have refused to pursue the registration of the said parcels of land in respect of their share despite being issued with the grant in the year 1987 and 1989 respectively. However, the said ELC suit was dismissed on June 19, 2019 for want of prosecution. The inordinate delay in partitioning the aforesaid parcel of land has necessitated filing this instant Application.
4. The Respondent opposed the application vide a sworn Replying Affidavit. He deposed that he is one of the Administrators of the estate of the late Gachagwi. He denied that the late Mucheru and Gachagwi owned the land known as Githunguri/Githiga/1005 as proprietors in common with each holding 200/645 and 445/645 respectively. He deposed that during his late father's lifetime, Gachagwi sold part of his land amounting to one and a half acres to the late Mucheru vide a Sale Agreement dated May 2, 1974 from his original land known as Githiga/Githunguri/240. The said one and a half acres was to be demised from the land parcel No Githiga/Githunguri/1005 which title emerged after subdivision thereof to a third party of the original Githiga/Githunguri/240.
5. He alleged that the late Mucheru took advantage of the late Gachagwi's illiteracy and sought consent from the Githunguri Land Control Board to facilitate the transfer of one and a half hectares of land. This led to the late Mucheru being registered jointly with the late Gachagwi as co-owners of the Githiga/Githunguri/1005 with each sharing 10/43 in favour of the late Mucheru. He further deposed that the late Mucheru then alleged to have purchased more land to be demised from Githiga/Githunguri/1005 and obtained consent from the Githunguri LCB and he was registered in the same title as a co-owner with the late Gachagwi sharing 445/645 in favour of the late Gachagwi. He deposed that the late Gachagwi realized this illegality and wrote a letter to the Registrar of Lands, and in response, the Ministry of Lands requested the Land Registrar in Kiambu to write a report on the late Gachagwi's allegations.
6. He averred that letters of administration were issued, and the grant confirmed in 1989 without any objections from the estate of Mucheru. Lastly, he deposed that the respondents filed a suit against Mucheru Civil Suit No 2963 of 1991 (ELC 848 of 2016) declaring that the transaction relating to the sale of the 5 acres out of Githiga/Githunguri/1005 was fraudulent. Therefore, this Application is premature.
7. The Application was canvassed by way of written Submissions.

Submissions

8. Mr Mitambo learned counsel for the Applicants submitted that this Court has unlimited and inherent powers to grant the Orders sought. He further submitted that where land is owned in common, each proprietor has a separate share, only that the same is undivided and held together with the other proprietors as one whole. Therefore, the late Mucheru's share of 200/645 in LR Githiga/Githunguri/1005 automatically vests in the estate and consequently the Applicants are legally entitled to it.
9. Mr Chege learned counsel for the Respondent submitted that 200 shares cannot be transferred to the Applicants before the dispute between the Applicants and the Respondents in the Environment and Land Court regarding those shares is determined. Counsel further submitted that the Applicant contradicted herself and it is unclear whether she claims for shares or the entire parcel of land. Counsel submitted that RL 19 and RL7 are by their nature meant to transfer known and specific parcels of



land but Githiga/Githunguri/1005 is yet to be subdivided. He submitted that the Respondent is disputing acreage and if this Court grants the orders sought, they would be deciding a dispute under the jurisdiction of the Environment and Land Court. Lastly, counsel submitted that the dispute on acreage is before Thika Environment and Land Court (ELC No 7 of 2021).

Determination

10. I have taken into consideration the pleadings and the rival submissions of the parties. From the pleadings, the respondent does not deny that the late Mucheru and the late Gachagwi are jointly registered as proprietors in common of the parcel of land known as Githiga/Githunguri/1005. His contention is that this registration was done fraudulently as there was no valid sale. Due to this contention, the respondent, and the other administrators of the estate of the late Gachagwi filed HCC 2963 of 1991. In the Complaint, the respondent alleged that the fraud committed by the late Mucheru was only possible because his father, the late Gachagwi was illiterate. He prayed for the Court to declare inter alia that there was no valid sale of part of the parcel of land from Githiga/Githunguri/1005. After the promulgation of the Constitution and the establishment of the Environment and Land Court, the matter was transferred to the ELC as ELC No 848 of 2016. This matter was later dismissed on November 20, 2018 for want of prosecution.
11. The Respondent's main reason for opposing this Application is rooted in the case that he filed against the late Mucheru but failed to prosecute. This is a Succession Court, and its mandate is to look at the documents on record and make a determination. It is not to take into consideration allegations and averments that should have had an audience almost three decades ago. Quite plainly and by any standards, the Respondent has been indolent, and his attempt to drag the distribution of the estate of the late Mucheru is inexcusable. Mr Chege submitted that the Respondent's allegation was filed in Thika ELC in 2021. This is an afterthought. The buying of time, in my view, is grievous and intolerable as I am tasked with the duty of balancing justice without hesitation.
12. On record, there is a copy of the Certificate of Official Search for Githiga/Githunguri/1005. It is dated November 26, 2018. It states that it is an absolute title with an approximate area of 6.45 hectares. The registered proprietors are the late Gachagwi and Alice Njeri Njoroge and Beth Nyakio Njoroge.
13. The Respondent has therefore not offered any reasonable explanation why the orders sought by the Applicant should not be granted. I hereby allow the Application dated March 7, 2019 and order as follows:-
 - a. That Jackson Kageche Gikang'a be and is hereby ordered to within 14 days from the date of this Order, execute all the requisite documents including form RL 7 and RL 19, mutation forms or such documents as may be necessary to facilitate the sub-division of Githiga/Githunguri/1005 as per the shares stipulated in the official Register and transfer the said portions to the beneficiaries of the estate of the late Francis N Mucheru.

And further to this, Jackson Kageche Gikang'a to avail certified copies of his national Identity card and income tax pin Certificate, and passport size photos or such documents as may be necessary to facilitate the aforesaid process.
 - b. That in default of executing the requisite documents as herein above ordered, the Deputy Registrar of this Honorable Court be and is hereby authorized to execute the said documents to facilitate the sub-division of Githiga/Githunguri/1005 as per the shares stipulated in the Official Register and transfer the said portions to the beneficiaries of the estate of the late Francis N Mucheru.



And further to this, the Land Registrar be and is hereby authorized to dispense with the production of the national identity card, Income tax pin Certificate, and passport photo of Jackson Kageche Gikang'a during the Registration process.

c. That the Respondent be and is hereby ordered to pay the costs of this application.

14. It is so ordered.

DATED and DELIVERED at NAIROBI this 16th day of January 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Mitambo for the Applicant

Mr. Chege for the Respondent

Gisiele Muthoni Court Assistant.

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