



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 409 OF 2013

IN THE MATTER OF ESTATE OF SUSAN NVETA alias SUSANA NVETA IRERI (DECEASED)

KARIUKI MURUANJAMIU.....PETITIONER/APPLICANT

VERSUS

MARTIN GICHOVI IRERI.....1ST RESPONDENT

JOHN NYAGA GITONGA.....2ND RESPONDENT

RULING

1. The applicant herein filed the instant application on 2/12/2019 seeking orders of eviction of the respondents from the Land Parcel No. Gatari/Nembure/10898, that the respondents be struck out from the certificate of confirmation of grant issued to the petitioner/applicant on 29/05/2014, that OCS Manyatta Police station be ordered to provide security and enforce compliance with the orders and further seeking for the costs of the application.
2. The application is premised on the grounds on its face and further supported by the applicant's supporting affidavit sworn on 28/11/2019. The applicant's case is that he is the registered owner of Land Parcel No. Gatari/Nembure/10898 (suit land) having inherited the same from his deceased mother. That the respondents took advantage of his age and interfered with the succession cause and were eventually included in the certificate of confirmation of grant and have forcefully occupied the suit land without his knowledge and consent and they proceeded to occupy the suit land and started developing and cultivating the same.
3. That he reported the matter to the Ministry of Lands, Housing and Development whereby the Land Registrar confirmed that he is the rightful registered owner of the suit land and upon request that the respondents do vacate the suit land, they have failed, refused and/or ignored to do so. That unless the orders sought herein are granted he stands to suffer irreparable damages and loss and thus causing him and his family to be landless.
4. The respondents opposed the application vide their replying affidavits sworn on different dates. From the reading of the said replying affidavits, it is clear that the respondents' case is that they each entered into sale agreements for sale of 0.10ha of the suit land with the applicant and that the suit land was later distributed as per the certificate of confirmation of grant issued to the applicant and thus it's not in existence. That the suit land was sub-divided into Land Parcel No. Gatari/Nembure/15056 which was transferred to the 1st respondent and Land Parcel No. Gatari/Nembure/15057 transferred to the 2nd respondent. That the applicant thereafter refused to sign the transfer forms and the 1st respondent made an application in court and the court gave an order that the Deputy Registrar do sign the forms.
5. That the applicant thereafter alleged that the boundaries to the suit land had been tampered with and when the land registrar was ordered to visit the ground for verification, the said allegations were found to be unjustifiable and without grounds. It was their case further that the applicant was present in court during the confirmation of grant and did not plead any undue influence. The 2nd respondent further deposed that he has already sold his portion to third parties and title deed issued to the said third parties. The respondents as such deposed that the instant application is unmerited and ought to be dismissed with costs.
6. The application was canvassed orally during which, the applicant submitted that the respondents herein obtained the documents without his knowledge and the same were brought to him by the area chief and that the respondents had failed to vacate the land despite him having written letters to them. The 1st respondent in his oral submissions reiterated his position that he bought his portion of land from the applicant and when the grant was confirmed, he failed to comply with the same and they filed an application and used the court order therefrom to get his share and title deed issued. The 2nd respondent also reiterated his position that he bought his land portion from the applicant so that he could get the finances to file the succession cause and they all agreed with his brother and sisters. That later the applicant told them that his land was less and that his brother had taken part of the land and they got orders from the court which enabled them to get their portions and title deeds issued. In a rejoinder, the applicant submitted that he was not the one who sold the land (to the respondents) but his sisters and that the said sisters returned the money to the respondents so that they could get land elsewhere.

7. I have considered the application herein, the replying affidavits by the respondents and the rival oral submissions made by the parties before this court.
8. The court record indicate that the applicant herein petitioned for grant of letters of administration intestate in Runyenjes PM's Succession Cause No. 101 of 2013 and the grant was issued on 27/09/2013 in Embu High Court Succession Cause No. 409 of 2013. The applicant herein subsequently applied for confirmation of the said grant vide summons for confirmation of grant dated 29/10/2013. The respondents herein were included as dependants and in the proposed mode of distribution, each of the respondents was to get 0.10ha. When the summons for confirmation came up for hearing, the records indicate that the applicant and beneficiaries were present in court and the applicant was given time to sought out his issues on other land parcels.
9. Subsequently, the matter was given another hearing date. On the said date, the records indicate that the applicant and the beneficiaries were present in court and the applicant indicated to court that he was following up on the other parcels. The grant was confirmed and the suit land distributed wherein the respondents herein were given their respective shares as was proposed by the applicant.
10. What comes out from the above is that the applicant was present on the day of confirmation of the grant. He was not opposed to the respondents getting their shares as was proposed in the summons for confirmation of grant. In my considered view, the applicant cannot thereafter come to court and disown an act he voluntarily did. The instant application is just but an afterthought after the applicant realized that he was left with no land for his own. This can be inferred from the records as he even made an application for the Land Registrar to visit the ground and ascertain the acreage of the land.
11. The applicant's main assertion is that the respondents took advantage of his age to interfere with the succession cause and were included in the certificate of confirmation of grant. This in my view translates to pleading undue influence. Undue influence connotes an element of coercion or external force intended to coerce a person into acting out of fear or involuntarily.
12. However, it is an elementary principle firmly emended in Section 107 of the Evidence Act Cap 80 Laws of Kenya that he who allege must prove. The onus to prove the existence of undue influence was on the applicant. As I have already noted, the summons for confirmation of grant was filed by him and wherein he included the respondents as beneficiaries and allocated each of them 0.10ha.
13. The applicant did not tender evidence as to how the respondents took advantage of his age to have their names included in the said certificate of confirmation of grant. It is not clear as to whether they forced him to include their names in the summons or whether they filed the application behind his back. In my view, the applicant was aware of the interests of the respondents herein and that is why he never objected to the respondents getting their respective shares on the day of confirmation of the grant herein.
14. At the hearing of the application, the applicant submitted that the suit land was registered in the names of his deceased mother and that the respondents herein obtained the documents without his knowledge and (the documents) were brought to him by the area chief. It is not clear which documents he was referring to. But could it be the order that the Deputy Registrar do sign the transfer forms? If this is so, I find the averments unfounded as it is clear that on the day of the hearing of the application which sought the orders, the applicant was present in court and he did not oppose the said application.
15. Taking all the above into consideration, I find that the application herein lacks merit and is further an abuse of the court process. The same is hereby dismissed with costs to the respondents.
16. It is so ordered.

Delivered, dated and signed at Embu this 10th day of February, 2021.

L. NJUGUNA

JUDGE

.....**for the Applicants**