



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

SUCCESSION CAUSE NO. 2'A' OF 2019

(FORMERLY MERU HIGH COURT SUCC. CAUSE NO. 148 OF 1999

& CHUKA CM'S COURT SUCC. NO. 412 OF 2016)

IN THE MATTER OF THE ESTATE OF RIARA NGICHURI (DECEASED)

BILDAD MUKAI RIARA.....PETITIONER

VERSUS

E.M. NKIRIA M'RIARA.....1ST APPLICANT

JANE CIAMBOGO M'RIARA.....2ND APPLICANT

NYAGA M'RIARA.....3RD APPLICANT

RULING

1. This cause relates to the estate of the late **M'RIARA NGICHURI** who died on 4th February 1984 resident at Igoki Thuita, Magumoni. The deceased died intestate living the following dependants as per the Chief's letter namely;

- i) Siphora Kibiuku
- ii) Judith Ntunda Kibiuku wives
- iii) Beldard Mukai Riara
- iv) Nyaga Riara
- v) Kinyua Riara
- vi) Gitonga Riara
- vii) Gitari Riara &
- viii) Jane Ciambogo Riara

2. The property comprising estate is that property known as Magumoni/Thuita/394.

3. Beldad Mukai Riara was appointed the administrator of the estate of the deceased herein on 6th March 2000 and the grant was confirmed on 2nd April 2001 with the estate being shared equally by Bildad Mukai Riara and Nyaga Riara.

4. E.M Nkiria M'Riara, Jane Ciambogo M'Riara and Nyaga vide Summons for Revocation of Grant dated 15th December 2010 applied for revocation of grant on the following grounds namely;

i) That the Petitioner/Administrator has used the grant to benefit himself.

ii) That the Administrator/Respondent has transferred the estate to 3rd parties.

iii) That the Administrator/Respondent has been acting in secrecy and in bad faith.

5. The 1st Applicant, E.M Nkiriya M'Riara in his Supporting Affidavit sworn on 15th December 2010 has deposed that they had agreed as a family that the estate be subdivided into 2 as there were two houses (wives). He has given the particulars of the houses as follows:

(A). Children of Zipporah Kibiuku

- (i) E.M Nkiriya
- (ii) Jane Ciambogo M'Riara
- (iii) Ciambaka M'Riara
- (iv) Medrine Ciambutegi
- (v) Bildad Mukai M'Riara

(B). Children of Judith Ntundu M'Riara

- (i) Agnes Kanyua
- (ii) Japhet Musyoka
- (iii) Kinyua Riara
- (iv) Nyaga Riara
- (v) Jamlick Gitonga Riara
- (vi) Lucy ciamati Riara
- (vii) Gitari Riara
- (viii) Murugi Riara

6. The 1st Applicant has deposed that after subdivision of the estate into 2 equal parts it resulted into Magumoni/Thuita/2453 and 2454 and that the same was registered in the names of Nyaga M'Riara and Bildad Mukai Riara respectively.

7. The 1st Applicant further avers that the Respondent further subdivided parcel No.2454 into parcel No.2859 and 2860 and transferred the same to his sons Charles Nyaga Mukai and Humprey Mutembei respectively and locked out the other beneficiaries of the 1st House (A). He claims that Humprey Mutembei the 2nd Interested Party herein further subdivided parcel No.2860 into parcels 2928, 2929, 2930 and 2931 with a view to circumvent justice.

8. In his oral evidence in court, the 1st Applicant denied getting a separate share of 5 acres from the deceased in his lifetime claiming that he bought it during adjudication process. He accused the administrator for carrying the administration of the estate in secrecy. He further testified that they had agreed as a family that the Respondent was to hold the share of the 1st house in trust of the children from that house while Nyaga was to hold for the 2nd house.

9. He further clarified under cross-examination that he had no problem with the share that went to the 2nd house. He accused the Respondent for benefitting alone from the 1st house and locking out the other children. He however stated that he has been living in his own share where he bought and that he has not done developments in the share that went to the 1st house. He insisted that he should be given a share of 3.5 acres that went to the 1st house.

10. The 1st Applicant acknowledged that Charles Ngai, Faith Kawira and Humprey Mutembei bought shares from part of the estate that went to the Respondent but accused the purchasers of conspiracy to defeat justice.

11. Jane Ciambogo M'Riara (PW2) also testified and told this court that she was a daughter of the deceased from the 1st house. She also accused the Respondent for not sharing the share that went to the 1st house equally but instead selling it to purchasers. She also denied that Ephas Nkiria (the 1st applicant) had benefitted from a separate share gifted to him by the deceased stating that the 1st Applicant bought it. He accused the Respondent for disposing the share that was meant for the 1st house and going to buy another share in order to defeat their claim.

12. Bildad Mukai Riara, the Respondent herein has opposed this application through a Replying Affidavit sworn on 4th April 2011. He has deposed that the estate was shared in accordance with the wishes of the deceased.

13. He further avers that when he got the title to his share he transferred it to his sons and 3rd parties who subsequently subdivided them and sold it to other people. He further contends that he sold his position and bought another parcel elsewhere where he settled after hostility from the Applicants.

14. He has faulted the Applicants for bad faith accusing them for reopening a matter long settled in order to harass him.

15. Njeru M'Murathi, the 5th Interested Party vide an Affidavit sworn on 10th May 2019 has also opposed this application. He avers that he together with Faith Kawira Mutua, the 4th Interested Party and his wife bought parcel No. Magumoni/Thuita/2928 from Humprey Mutembei sometime in 2007 and paid a total consideration of Kshs.180,000/-. He further avers that he also bought parcel No. Magumoni/Thuita/ 2930 for Kshs.230,000/- in 2008.

16. He has further averred that the 1st, 2nd and 3rd Interested Parties (who have granted him authority to swear on their behalf) are also *bona fide* purchasers from both the Respondent and that all obtained good titles to their respective shares.

17. The 5th Interested Parties has further deposed that the succession cause in Meru Hcc Succ. No. 148/99 was done regularly and that they did due diligent before purchasing their respective shares and that having bought their respective shares after Succession Cause, their respective interests are protected in law.

18. In his oral evidence in court, the 5th Interested Parties reiterated the contents of his affidavit and stated that he bought the parcels from Mutembei without written agreements. He reiterated that he is an innocent purchaser.

19. The Interested Parties through counsel have all contended that they would be prejudiced if the grant was to be annulled.

20. This court has considered this application and the response made. The main issue in this application is whether there is basis to revoke the grant herein and whether the purchasers (read Interested Parties) interests are protected by law since there is no dispute that the Respondent herein disposed off the interests in the estate a while ago between 2007 and 2008 going by the evidence tendered in this matter.

21. This court notes that this cause was filed way back in 1999 in Meru H.C. vide Succession Cause No.148 of 1999. The file was later transferred to this court in 2016 when this court was established. The applicants have not stated why it took them more than a decade to move this court for revocation of grant. The 1st Applicant clearly states that they agreed as a family that the estate was to be subdivided into two equal portions as per the number of wives or houses which was done. The Applicants have no problem with the portion that went to the 2nd house. Why then did the Applicants from the 1st house wait for all that time without raising a finger if it's true that they had been short charged. I have looked at the grounds upon which they have moved this court its quite apparent that the grounds are distinct from the elaborate grounds provided under **Section 76 of Law of Succession Act**.

22. The Respondent has submitted that the Applicants are guilty of laches and has relied on the case of Tabitha Wanjiru -vs- Jotham Kiliko Hoka & 2 Others [2017] eKLR. I have looked at the authority and am persuaded that the ratio in decidendi apply here because really the delay by the Applicant in bringing this application is both unreasonable and no reasons were advanced to explain the delay despite prompting by this court during trial. While it is true that applications under **Section 76 of Law of Succession Act** is not time bound unreasonable delay like in this cause would obviously work against an applicant, particularly where the grounds for revoking the grant are as wanting as in this instance.

23. Secondly and more importantly the Respondent as observed above disposed or sold of his interests in the estate upon securing good title. It therefore follows that he subsequently passed good title to the purchasers who are Interested Parties herein. The purchasers in this cause are innocent and purchased their interests in good faith and such purchasers are protected by law. **Section 92 (1) of the Law of Succession Act** provides;

"Any person making or permitting to be made any payment or disposition in good faith under a grant of representation shall be indemnified and protected in so doing notwithstanding any defects or circumstances whatsoever affecting the validity of the grant."

24. Further to the above protection, **Section 93 (1) of Law of Succession Act** provides;

" A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after commencement of this Act."

The Applicants have not faulted the Respondent for any fraud which means that he properly obtained the grant of representation with the

knowledge of the Applicants and that could explain why they were passive for all those years. This court finds that their delay is not only inexcusable but contributed to the Interested Parties purchase of the interests in the estate. They surely have only themselves to blame because the interests properly acquired by the 3rd parties (Interested Parties) are as noted above protected by the law. There are no good reasons advanced to impugn the transactions that led to acquisition by the interested parties of their respective parcels.

In the end I find no merit in the Summons for Revocation of Grant dated 15th October 2010. The same is disallowed but I shall make no order as to costs.

Dated, signed and delivered at Chuka this 5th day of May 2020.

R.K. LIMO

JUDGE

5/5/2020

Ruling signed, dated and delivered in court in presence of Murithi for Applicant and in absence of Mutani for Applicant and Anampiu for Respondent.

R.K. LIMO

JUDGE

5/5/2020