



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSES NO. 135 OF 2011

In the matter of the Estate of NGUU MBAROMWE Alias NGUO MBARIMWE (Deceased)

MILIAM IRIMA NGUU.....APPLICANT

V E R S U S

MERCY NJERI NJUE.....RESPONDENT

R U L I N G

1. In this application dated 8/02/2017, the applicant in her capacity as widow of the deceased seeks for orders for cancellation/ deletion of the name of one Joseph Njue Nguu from the proprietorship section of the register for LR. Ngandori/Kirigi/ 882 and replacing him with that of the deceased Nguu Mbaromwe alias Nguo Mbarimwe.
2. The second prayer seeks for orders to restrain respondent by herself, her agents, servants and/or anybody acting on her instructions from entering, occupying, utilizing, cutting down trees, constructing any buildings or structures and committing other acts of wastage or on the land LR. Ngandori/Kirigi/882 pending the determination of this cause.
3. The applicant relies on grounds on the face of the application and in her supporting affidavit. She deposes that the land LR. Ngandori/Kirigi/882 was registered in the name of the deceased at the time of his death. The current registration was obtained by her son with the deceased namely Joseph Njue Nguu fraudulently and without her knowledge.
4. He had filed Principal Magistrate Succession Cause No. 66 of 1982 which was later transferred to the High Court No. 997B of 2002 and obtained letters of administration intestate in the estate of the deceased Nguu Mbaromwe alias Nguo Mbarimwe. But before confirmation of grant, Joseph unlawfully obtained registration in his name.
5. It is further stated that in a ruling delivered by Bwonwonga J. on 7/12/2016, it was found that the land in issue formed part of the estate of the deceased.
6. The respondent has been cutting down trees on the land and had deposit building materials on the land in preparation of doing some construction. It is also alleged that there is a likelihood of selling the land or a portion if it before determination of the suit.
7. The respondent has filed succession cause No. 67 of 2010 in the estate of her husband Joseph Njue Nguu where she included LR. Ngandori/Kirigi/882 for distribution. The grant was confirmed on 7/07/2011 in favour of the respondent and her children.
8. The respondent filed grounds of opposition stating that the registration of the land LR. Ngandori/Kirigi/882 was obtained in separate succession proceedings and not in Succession Cause No. 135 of 2011. The orders sought ought to be canvassed in separate legal proceedings according to the respondent.
9. The background facts are that the land LR. LR. Ngandori/Kirigi/ 882 was at the time of deceased's death registered in his name. the applicant in her capacity as his widow filed succession cause no. 135 of 2011 for distribution of her late husband's estate.
10. The respondent's late husband Joseph Njue Nguu had filed Principal Magistrate Succession Cause No. 66 of 1982 which was later transferred to the High Court No. 997B of 2002 in respect of his late father's estate Nguu Mbaromwe alias Nguo Mbarimwe who is the deceased in this cause No. 135 of 2011. He was appointed administrator of the estate but did not apply for confirmation of the grant. He unlawfully obtained registration of the land LR. Ngandori/Kirigi/882 in his name.
11. The same asset was the subject of Succession Cause No. 7 of 2010 by the respondent who is the widow of Joseph Njue Nguu the late son of the deceased. This was after the death of Joseph Njue Nguu and the respondent proceeded to distribute the land to herself and children.

12. In this cause, Bwonwonga, J. in his ruling delivered on 7/12/2016 made a finding that LR. Ngandori/Kirigi/882 was unlawfully registered in the name of the respondent's late husband because it did not go through the full succession process as required by the law. This ruling has not been challenged or overturned.
13. It is not in dispute that the registration of the land by Joseph Njue Nguu was obtained fraudulently as stated in the ruling of the judge delivered on 7/12/2016.
14. The only issues for determination in this application are twofold;
- i. Whether the orders sought herein for deletion of the name of Joseph Njue Nguu in the register of LR. Ngandori/Kirigi/882 should be granted.*
- ii. Whether the respondent should be restrained from selling, cultivating the land and/or committing acts of waste on the suit premises.*
15. The copy of register of LR. Ngandori/Kirigi/882 shows that Joseph Njue Nguu was registered owner of the land on 3/08/1983 "by transmission". The Succession Cause No. 66 of 1982 where Joseph Njue Nguu was appointed administrator was filed in 2002 and the grant was never confirmed.
16. The record of registration as shown by the register is incorrect that he obtained registration "by transmission". The letters of administration were issued to the late Joseph Njue Nguu on 15/07/1983.
17. If the grant was to be confirmed it would have come at least six (6) months later as prescribed by Section 71(1) of the Act unless there was a successful application to confirm the grant before the expiry of the six (6) months period under Section 71(3).
18. As ruled by Bwonwonga J., this was a clear case of obtaining registration by fraud. The respondent has now used the said fraudulent registration to distribute the land to herself and her children in succession Cause No. 67 of 2010.
19. It is trite law that no legal interest will be conferred on any person who has obtained that interest fraudulently. I believe that during confirmation of grant in favour of the respondent, the court was not aware of the facts leading to the said registration in favour of the respondent's husband. Otherwise, the orders for confirmation of the grant would not have been issued.
20. It is imperative to note that the widow of the genuine owner of the land Nguu Mbaromwe alias Nguo Mbarimwe the applicant herein is still alive and has priority precedence under Section 66 of the Act over the respondent herein. She also ranks in priority over her late son Joseph Njue Nguu who filed Succession Cause No. 66 of 1982 without her knowledge.
21. The deceased has other beneficiaries as listed in this cause apart from the late Joseph Njue Nguu the late husband of the respondent. Subject to the provisions of the law, these beneficiaries must be given their right, or at least the right to be heard by a succession court.
22. The respondent also requires to be heard and her interests addressed in accordance with the law as she steps in the shoes of her late husband Joseph who was a beneficiary in the estate of the deceased.
23. The applicant has named the respondent as a beneficiary and three of her (applicant's) own children.
24. The grounds of objection by the respondent are that deletion of the name of Joseph Njue Nguu from the register should not be done in these proceedings. It was not indicated which forum the respondent was referring to.
25. However, the court directed that Succession Cause No. 67 of 2010 filed by the respondent be joined to this case No. 135 of 2011 since they relate to the same deceased and to the same asset. The two cases have now been consolidated and being considered as one. No orders of distribution of the estate were ever made in HC Succession Cause No.997 of 2002 formerly PM Succession Cause No. 66 of 1982.
26. In view of the foregoing facts which are not in dispute, it is my considered view that any succession matters of the deceased Nguu Mbaromwe alias Nguo Mbarimwe be dealt with in these consolidated causes to facilitate the law of inheritance to be applied as required.
27. I find no need of filing other proceedings on issues that have already been decided by a court of competent jurisdiction on other issues that are not in dispute.
28. The respondent has not denied that she is committing acts of waste on the land in issue. Neither has she denied that she has deposited building materials on the land.
29. I find that the applicant's evidence on oath is uncontroverted and has established that the respondent requires to be restrained for preservation of the estate.
30. It is my finding that this application is merited and it is hereby allowed in the following terms: -

i. That the letters of administration issued to the late Joseph Njue Nguu in Succession Cause No. 997B of 2002 are hereby declared null and void.

ii. That the orders made in favour of the applicant and any other person for administration of the estate of Nguu Mbaromwe alias Nguo Mbarimwe and for confirmation of grant thereof in Succession Cause No. 67 of 2010 are hereby nullified.

iii. That the name of Joseph Njue Nguu in the register for LR. Ngandori/Kirigi/882 be deleted and replaced with that of the deceased herein Nguu Mbaromwe.

iv. That the respondent is at liberty to file a protest against confirmation of grant in these proceedings in respect of the application for confirmation dated 16/08/2011 by the administrator herein Miliam Irima Nguu within 30 days.

v. That each party meets their own costs of this application.

31. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF JANUARY, 2019.

F. MUCHEMI

J U D G E

In the presence of: -

Mr. Okwaro for Petitioner/Applicant

Mr. Wachira for Njiru for Respondent