



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 7 OF 2002

IN THE MATTER OF THE ESTATE OF M' HURANIRA M'ARIMI (DECEASED)

FRANCIS IGWETA M'MUGAMBI.....OBJECTOR

STEPHEN THURANIRA MUGOKI.....INTERESTED PARTY

VERSUS

KATHUKU M'ANAMPIU.....PETITIONER

JAMES GAKUNDI.....RESPONDENT

RULING

1. On 30th April 2019 counsel for the petitioner made the averment to this court that the deceased herein is alive and the cause ought not to have been filed in the first place. This being a succession case the objection is of fundamental preliminary importance and must be determined in limine.
2. At some stage on 30th October 2018 the grant was revoked by this Honourable Court. But what does evidence hold in relation to the allegation that the "deceased" to whose estate these proceedings purportedly relate is still living?
3. A quick glance of the proceedings. The petition for letters of Administration was filed on 17th January 2002. The petitioner herein listed himself as a purchaser. She also listed **Kamenta M'Mpiu** as the only son and beneficiary of the deceased. On 31ST July 2002 the petitioner was issued with a grant for letters of Administration. The petitioner filed summons for confirmation of grant on 9th January 2003. The grant was confirmed on 8th April 2003. A certificate of Confirmation of grant was issued on the same date.
4. The petitioner sought the Executive officer to sign all the relevant transfer documents. Vide a letter dated 13th October 2003. The District Land Registrar reverted that the estate herein Ntima/ Igoki/300 is obsolete hence the documents are not registerable.
5. **Stephen Thurania Mungori** alias M'Thuranira M'Arimi also filed an affidavit dated 3rd March 2004 claiming that he has always been the absolute proprietor of land parcel No. Ntima/Igoki/300 which ceased to exist on 22nd January 1998 and that the petitioner was misleading the court into believing that he is the same as M'Arimi M'Itwerandu (his grandfather).
6. **Evangeline Kathuku** also filed an Affidavit dated 16th September 2004 claiming that the deceased herein is the original owner of the estate properties and Stephen Thurania Mungori is calling himself Thurania M'Arimi in order to steal the land. She also prayed that the Land Registrar be ordered to cancel Ntima/Igoki/5633, Ntima/Igoki/5756, Ntima/Igoki/5757 in the register of land and register the land in the name of the deceased for purposes of effecting the grant.
7. Stephen Thurania Mungori also filed summons for revocation of grant on 29th October 2005. The same was also supported by an affidavit sworn by Francis M'Igweta Mugambi.
8. Several applications have been filed seeking the stoppage of burials scheduled in the estate properties; these were dealt with. Subsequent affidavits have been filed by the petitioner and the objector.
9. It is the objector's averment that the property in Ntima/Igoki/300 belonged to Stephen Thurania Mungori. Stephen Thurania Mungori testified that he was born in the year 1955 hence was 25 years old when he was issued with the title in the year 1970. That he later sold and

transferred the same to purchasers. That the petitioner was a tenant and has no relations to M' Arimi M' Itwerandu.

10. The petitioner testified that she bought ½ an acre from M' Arimi M' Itwerandu. She did not put the agreement in writing but she built in the parcel during the lifetime of the deceased. She testified that she filed the case in order to get title to her parcel of land. She however admitted that the parcel was not in existence when he filed the case. She also made reference to Case No. 1 of 1980 and Case No.183 of 2003 in relation to the suit premises.

11. The copy of the green card shows that M' Thuranira M' Arimi was granted title in the year 1970. On an application for correction of name a new title was issue to Stephen Thuranira Mungori alias M' Thuranira M' Arimi in the year 1978. In the same year title was transferred to Francis K. M' Igweta & Stephen Thuranira Mungori.

12. The record also shows that there has been multiple cases over the suit premises i.e. **Civil Case No. 570 of 2006 Republic vrs Kathuku M' Anampiu, Civil Suit No. 467 of 1979 Francis M' Igweta & Ano vrs Kathuku Anampiu, Civil Suit No. 256 of 1985 Kathuku M' Anampiu vrs M' Arimi M' Tuerandu & 2 others.**

13. One of the core functions of this court is to ascertain the estate property. From the record, the suit premises belonged to M' Thuranira M' Arimi as at 8.1.1970. Nothing shows that M' Thuranira M' Arimi and M' Tuerandu are one and the same person. Certificate of death No 511843 relates to M' Arimi M' Tuerandu who died on 15th August 1995. The Objector claims to the M' Thuranira M' Arimi. Therefore, the objection that these proceedings relate to a living person is defensible. Even if we take M' Thuranira M' Arimi and M' Arimi M' Tuerandu to be one and the same person, the record shows that the suit premises were transferred during the lifetime of the deceased, i.e. in 1978. In sum, the identity of the deceased is in doubt as these succession proceedings relate to M' Thuranira M' Arimi and not M' Arimi M' Tuerandu. The petitioner's claim to ½ acre in the suit premises is based on purchaser's interest and not as an heir. One other important matter; the suit land is obsolete and parties hold titles to the subdivisions. In the premises, this court is not able to ascertain the identity of the deceased person or estate property or rightful beneficiaries if at all. These proceedings are muddled up with obscurities and it is safe from the record to conclude that the proceedings are untenable in the form they are. I am aware that the petitioner has claimed fraud. I also note that upon an application for correction of name a new title was issue to Stephen Thuranira Mungori alias M' Thuranira M' Arimi in the year 1978. In the same year title was transferred to Francis K. M' Igweta & Stephen Thuranira Mungori. But the question is; which is the correct forum to unravel all these claims?

14. From the above recapitulation of relevant facts of the case, I am led to one inescapable conclusion; that issues of proprietary interest or fraud over acquisition of the suit premises should be determined by the Environment and land court amongst the parties or their duly appointed personal representatives. The petitioner will have an opportunity to establish her claim in a formal suit in that respect in ELC. And this court will simply give effect to any order so obtained. I see many other suits had been filed and M' Tuerandu was a party in one or more of those suits. These are also issues to ponder moving forward. In the upshot, I uphold the objection. These proceedings are untenable in the current form. It is so ordered.

Dated, signed and delivered in open court at Meru this 1st day of July 2019

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F. GIKONYO

JUDGE.

IN PRSENCE OF

M/s Nelima for Mokuia for Objector

Petitioner deceased - Her son James Gikundi present

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F. GIKONYO

JUDGE.