



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 616 OF 2001

IN THE MATTER OF THE ESTATE OF JOSEPH NJUKU MWANIKI (DECEASED)

DAVID MWAURA MWANIKI.....1ST APPLICANT

ISAAC KARANJA MWANIKI.....2ND APPLICANT

LUCY WANJERI KANGETHE.....3RD APPLICANT

BONFACE MWANGI MWANIKI.....4TH APPLICANT

JOSEPH KAMAU MWANIKI.....5TH APPLICANT

PAUL NDERI MWANIKI.....6TH APPLICANT

NANCY WANGUI MUNGAI.....7TH APPLICANT

MARGARET MUKUHI MWANIKI.....8TH APPLICANT

VERSUS

TERESA WANGUI MWANIKI.....1ST RESPONDENT

ROBERT RAYMOND MWANIKI.....2ND RESPONDENT

JUDGMENT

1. Before court for determination is an application dated 11th September, 2018 filed by David Mwaura Mwaniki and 7 others where they seek to have the grant of letters of administration issued to Teresa Wangui Mwaniki and Robert Raymond Mwaniki on 18th May 2001 and confirmed on 22nd May, 2002 revoked.

2. The application is substantially predicated on grounds that the grant was obtained fraudulently and without disclosing the fact that the applicants and previously their parents occupied a third of **L.R. No. Naivasha/Mwichiringiri Block 1/38** and further that their involvement in the succession proceedings was imperative.

3. In the supporting affidavit of the 1st Applicant David Mwaura Mwaniki, he depones that their parents the late Loise Njoki Mwaniki and late Naftali Mwaniki occupied 1/3 of the land in dispute as owners during the lifetime of the deceased a fact well known to the beneficiaries of the estate of Joseph Njuku Mwaniki who fraudulently and without disclosure obtained the grant herein, had it confirmed without reference to them, to their detriment as the land in dispute has now been shared out, and which act has subsequently led to a land case in Nakuru seeking for their eviction.

4. Further the Applicants state that their family members have been buried in the disputed land which land they occupy to

date.

5. In a replying affidavit the first respondent admits knowing the Applicants whom she describes as step brothers and sisters of her late husband. It is her case that the land subject matter was purchased by her late husband and that he was issued with a title back in 1985.

6. Further she states that her late husband allowed the Applicants' mother to stay on the property on temporary basis and that after conclusion of this succession cause the land was inherited by her son Charles Mwaura Mwaniki who allowed the Applicants and their mother to continue staying thereon, however in 2009 the said Charles Mwaura gave notice to vacate which the Applicant' declined to honour.

7. Having considered the application, submissions by rival parties I am of the view that the Applicants have demonstrated to this court that they have sufficient interest in the matter of the property in question and ought to have been put on notice of the succession cause since they have occupied the property over the years.

Equally this court should have been made aware of the fact, that third parties were in occupation. After all, if the claim by the applicants is unfounded the court would have found as much.

In the case of **Musa Nyaribari Gekone & 2 others vs Peter Miyianda & Another C.A. Kisumu case No. 2 of 2014** the Court of Appeal pronounced itself on who an interested party is and it stated:

“The expression “any interested party” as used in that provision, in its plain and ordinary meaning in our view wide enough to accommodate any person with a right or expectancy in the estate.....”

8. Based on the facts of this case and guided by the Court of Appeal

decision in **Musa Nyaribari Gekone** (supra) & persuaded by the decision in **Priscah Wahome vs John Mwenje Wahome High Court succession case No. 196 of 2005** I am of the opinion that the claim by the Applicants cannot be wished away as the court ought to have been made aware of their interest and they served with proceedings as persons with interest on the land in question.

9. Having stated the above I note that the deceased estate comprised of several other assets that are not in contention and there would therefore be no need to interfere with the entire estate. Consequently the orders confirming the grant herein to the extent only of **L.R. No. Naivasha/Mwichiringiri Block 1/38** are set aside and the said title will revert to the name of its original owner pending further orders.

10. Due to the age of the matters the Applicants are directed to file their protest to the confirmation of the grant to the extent of their interest in **L.R. No. Naivasha/Mwichiringiri Block 1/38** within the next 21 days. The administrators will respond to the protest within 15 days of service.

The matter will thereafter be mentioned for directions.

11. Costs to the Applicants.

DATED, SIGNED and DELIVERED at NAIROBI this 19TH DAY OF SEPTEMBER, 2019.

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ALI-ARONI

JUDGE