



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**SUCCESSION CAUSE NO 7 OF 2016**

**(FORMERLY NANYUKI SRM SUCCESSION CAUSE NO 11 OF 1998)**

**(IN RE ESTATE OF SAMUEL M'TWARUCHIU M'NARIMU, DECEASED)**

**LOISE MAKANDI M'TWARUCHIU.....ADMINISTRATOR/APPLICANT**

**VERSUS**

**1. CHARITY KABURO M'TWARUCHIU**

**2. JULIUS KITHINJI M'TUARUCHIU**

**3. JACKSON WANJOHI NDINAH.....RESPONDENTS**

**RULING ON SUMMONS DATED 18/09/2018**

1. The Deceased in this cause died on 12/10/1997. His two widows, **GLADYS NCHECHE M'TWARUCHIU** and **CHARITY KABURO M'TWARUCHIU**, quickly applied for a grant of letters of administration intestate in respect to the Deceased's estate vide *Nanyuki SRM Succession Cause No 11 of 1998*. Such grant was made and issued to them on 24/11/1998. For over 17 years the two widows never applied for confirmation of the grant in order to distribute the estate of the Deceased.

2. The Deceased was also survived by many children (all adults), including one **LOISE MAKANDI M'TWARUCHIU**. She applied to this court for *inter alia*, withdrawal of the succession cause from the lower court and transfer of the same to the **High Court**, and also for revocation of the grant made and issued to the two widows. This was vide a summons dated 04/02/2016.

3. In a ruling dated and delivered on 19/12/2016 this court (Kasango, J) withdrew the cause from the lower court and transferred it to the **High Court**, revoked the grant made and issued to the two widows, and appointed the said Loise Makandi M'Twaruchiu as the Administrator of the Deceased's estate. A grant of letters of administration intestate to the estate of the Deceased was made and issued to her on 19/12/2016. She will hereinafter be referred to as the Administrator.

4. The Administrator subsequently applied by summons dated 29/12/2016 for confirmation of the grant. Several of the Deceased's survivors/beneficiaries filed affidavits of protest to that summons for confirmation. One **JACKSON WANJOHI NDINAH** also filed an affidavit of protest claiming a purchaser's interest in respect to one of the properties of the Deceased. That property is referred to as **UNSURVEYED RESIDENTIAL A5 PLOT NO 43, NANYUKI MUNICIPALITY**. Jackson Wanjohi Ndinah will hereinafter be referred to as the Purchaser.

5. The aforesaid protested summons for confirmation is pending disposal. In the meantime the Administrator has applied by **summons dated 18/09/2018** for orders -

**“That (the)....court be pleased to cancel the following titles:**

**i) L.R. LAIKIPIA/DAIGA/ETHI BLOCK 2/69**

**ii) L.R. DAIGA/UMANDE BLOCK 10/281 (TIMAU)**

**iii) UNREGISTERED RESIDENTIAL A5 PLOT NO 45**

**and order the Land Registrar to register the same in the Deceased's name.”**

That application is the subject of this ruling. It is premised upon the following grounds as they appear on the face thereof-

- i) That “there have been dealings with the estate leading to transfer of the assets...without a confirmed grant of representation”.
- ii) That the properties “need to be returned (unto) the Deceased’s name to enable proper distribution as sanctioned by the law”.
- iii) That “the transfers were done without the authority of this court”.

The application is supported by two affidavits – one by the Administrator and a second one by one of the Deceased’s widows, Gladys Ncheche M’Twaruchiu.

6. There is a replying affidavit sworn and filed by the Purchaser on 31/10/2018. By it he opposes the application in respect to the **Unsurveyed Residential A5 Plot No 43**. I cannot find on the record any other replying affidavit filed in response to the summons dated 18/09/2018.

7. The court directed that the application be disposed of by way of written submissions with the option to highlight. The Administrator/Applicant filed her submissions on 01/03/2019. The 1<sup>st</sup> Respondent (one of the widows of the Deceased) filed her submissions on 30/04/2019. In the meantime the Purchaser had filed his submissions on 23/01/2019. No other survivor/beneficiary of the Deceased filed papers in respect to the application at hand.

8. I have read the affidavits sworn in support of and in opposition to the application. I have also considered the written submissions made. There was no highlighting. Finally, I have perused the court record.

9. With regard to the two registered properties **L.R. LAIKIPIA/DAIGA/ETHI BLOCK 2/69** and **L.R. DAIGA/UMANDE BLOCK 10/281 (TIMAU)**, the Administrator states in her supporting affidavit that the two parcels of land were “gathered” respectively from **East Laikipia Farmers Co. Ltd, Nanyuki** and **Timau Farmers Limited**. She purported to annex a “copy of a list of members showing Plot No 69 in (the Deceased’s) name”; however there is no such annexure attached to the affidavit on the court record. In any event, such “list of members” would be too tenuous a connection between the Deceased and a registered parcel of land that is in the name of another person (albeit a survivor of the Deceased). In respect to **L.R. DAIGA/UMANDE BLOCK 10/281**, another registered parcel of land that is in the name of another person (also another survivor of the Deceased) there is not even evidence of such tenuous connection.

10. Certificates of **official search** in respect to the two registered parcels of land were annexed to the Administrator’s affidavit sworn in support of the application for revocation of the grant made and issued to the two widows. The search certificates show that the parcels of land are respectively registered in the names of CHARITY KABURO M’TWARUCHIU and JULIUS KITHINJI M’TWARUCHIU, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

11. Any person wishing to assert that the two registered parcels of land belonged to the Deceased would have to institute appropriate proceedings (complete with pleadings) in an appropriate civil court. A succession court’s jurisdiction is limited to establishing who are entitled to a deceased person’s undisputed free assets and their respective shares therein. A succession court does not have the tools to investigate titles to land and adjudicate upon complex competing interests in such titles, not without proper and appropriate pleadings and other safeguards available in a fully-fledged civil proceeding.

12. That however is not to say that a succession court has no power to protect the assets of a deceased person’s estate; far from it! **Section 45(1)** of the **Law Succession Act, Cap 160** (the Act) specifically prohibits the intermeddling with the free property of a deceased person. **Sub-section (2)** of the section criminalizes such intermeddling. And **proviso (ii)** to **section 82(b)** of the Act prohibits the sale of the deceased person’s immovable property before confirmation of the grant.

13. In respect to the **Unsurveyed Residential A5 Plot No 43**, it is common ground that it belonged to the Deceased. A letter of allotment exhibited by the Purchaser himself confirms this. It is also common ground that the plot was sold to the Purchaser, **not** by the Deceased, but by his two widows after his death, and upon the strength of the **unconfirmed** grant of letters of administration that had been made and issued to them. The sale agreement annexed to the replying affidavit of the Purchaser confirms this (though one of the widows has denied the sale agreement). Clearly, the then administrators had no legal authority to sell the property to the Purchaser upon the strength of a grant of letters of administration that had not been confirmed. They could not, and did not, pass any title to the Purchaser, and the property still belongs to the Deceased and must revert to his estate for distribution along with his other free properties. The submission by the Purchaser that this court has no jurisdiction to make such an order is misconceived and is overruled.

14. In the result, I shall allow as prayed the summons dated 18/09/2018, but only in respect to **Unsurveyed Residential A5 Plot No 43**. The application is dismissed in respect to the two registered properties **L.R. LAIKIPIA/DAIGA/ETHI BLOCK 2/69** and **LR DAIGA/UMANDE BLOCK 10/281(TIMAU)**. It is so ordered.

15. Parties shall bear their own costs of the application.

**DATED AND SIGNED AT NANYUKI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2019**