



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 50 OF 1999

In the Matter of the Estate of Jennifer Kiacia Anampiu (Deceased)

ELIAS GITARI MARETE.....PETITIONER/APPLICANT

-VS-

JOYCE KATHAMBI MUTHONI.....OBJECTOR/RESPONDENT

RULING

[1] I have before me a summons dated 10th March 2017 and expressed to be brought pursuant to Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The Objector seeks the following orders;

a).spent

b) THAT the registration of land parcel number Ngushishi Settlement Scheme/192 in favour of the Petitioner be cancelled and ownership thereof to revert in the name of the deceased Jennifer Kiacia.

c) THAT the Deputy Registrar of this court be empowered to sign all the necessary documents in place of the Petitioner to facilitate the implementation of the confirmed grant dated 25th February 2014.

d) THAT costs of this application be borne by the Petitioner.

[2] The application is premised upon the grounds set out in the application and in the affidavit sworn by the Objector. The objector contended that the Petitioner got himself registered as the owner of the suit land pursuant to the initial Grant dated 7th March 2000- a Grant that was revoked by the court on 20th January 2009. The Objector further contended that the revocation of the initial Grant dated 7th March 2000, effectively nullified the registration of the Petitioner as the owner of the suit land. And the subsequent confirmed Grant that was issued in this matter on 25th February 2014 is the one that counts, yet, the implementation of the confirmed Grant dated 25th February 2014 has been hindered by the fact the Petitioner is still registered as the owner of the suit land. Based on the foregoing reasons, the Objector has prayed that the registration of the Petitioner as owner of land parcel .Ngushishi Settlement Scheme/192 be cancelled and ownership thereof to revert into the name of the deceased Jennifer Kiacia, to facilitate implementation of the current Grant.

[3] The Petitioner opposed the Application and filed a Replying Affidavit in which he denied the Objector’s contentions. He averred that L.R Ngushishi Settlement Scheme/192 has never been the deceased’s property. He asserted that he was the original owner of the suit land having bought it from the settlement scheme fund.

[4] When the matter came up for hearing on 13th March 2017, it was agreed that this application be disposed of by way of written submissions. The Objector filed submissions in which he reiterated the contents of her application and affidavit which I have set out above. She added however that the issues the Petitioner was now raising had already been canvassed and fully determined in the judgment dated 20th January 2009.

[5] The Petitioner argued that the estate in issue had been registered in the names of Elias Gitari whose owner was still living and that there was no registration of the suit land herein in the lands office showing the deceased as the owner. The Objector further contended that the judgment upon which the Applicant relied on to make the application was made in error as the parties did not disclose to the court that the land in issue was already registered in the names of the Respondent.

DETERMINATION

[6] Upon careful consideration of this application and the rival submissions by the parties, I take the following view of the matter. By judgment delivered by Ouko J on 20th January 2009, the court stated the following;

“...of the two sides the Objector’s witnesses gave consistent and truthful evidence. I am persuaded from their testimony that the suit land was allocated to the deceased as a poor landless lady with no children and no husband.”

And at page 10 of the said judgment, the Learned Judge further observed as follows;

“...from the foregoing I come to the conclusion that the suit land was allocated to the deceased.”

[7] I need not add anything as the court determined that the suit property belonged to the deceased. The judgment alluded to above is final and remains in force to date, for it has neither been reversed by a higher court nor reviewed by this court. I agree with the Objector, that the issues that the Petitioner is now raising in his submissions were fully canvassed before Ouko J and determined completely and effectually. As such, the Petitioner cannot be heard on the same issues in this application or in this cause. I also note with great concern that the Petitioner had previously filed an application seeking review of the Judgment delivered by Ouko J on 20th January 2009. The court in dismissing the Petitioner’s application at page 15 observed as follows:

“...the upshot of my above analysis of all the circumstances in this case is this. For the above reasons and having found that the Applicant has not satisfied the requirements for orders of review, variation or setting aside of court orders or judgment, I find the 2nd Application to be without merit and I accordingly dismiss it with costs to the Respondent. I must also state that once orders are made by the court all relevant implementing bodies or parties must give effect to the orders and should not be the stumbling block by self proclaiming to be the ultimate interpreter of the decision of the court. The land registrar herein should give effect to the confirmed grant herein and accordingly align the record on this land to the decision of the court...”

[8] In light thereof, this litigation must come to an end as a matter of justice. And any party with the desire to vex the other parties in a proceeding by raising issues which have been fully determined and closed, will be stopped by the court. As things stand now, the Grant issued by this court on 25th February 2014 is not a barren result; it is effective order of the court and must be implemented as earlier ordered. Accordingly, I allow the Application dated 10th Mach 2017 with costs to the Objector. For the sake of clarity, I direct that:-

1. The relevant Registrar of Land to cancel the registration of the petitioner as owner of land parcel number Ngusishi Settlement Scheme/192 and revert the land into the name of the deceased Jennifer Kiacia.

c) The Deputy Registrar of this court shall sign all the necessary documents in place of the Petitioner to facilitate the implementation of the confirmed grant dated 25th February 2014. The registrar to effect the said grant as confirmed.

d) Costs of this application be borne by the Petitioner.

Dated, signed and delivered in open court at Meru this 7th day of February 2018

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F. GIKONYO

JUDGE

In the presence of:

Mwiti for Kariuki for Objector

M/s. Thibaru for Kimathi for petitioner

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F. GIKONYO

JUDGE