



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. APPLICATION NO. 161 OF 2014

In the matter of the Estate of the late NJAGI NJERU Alias

MBUCHI BARAGU - Deceased

JOHNSON MURIUKI.....APPLICANT

V E R S U S

JERVASIO NYAGA NJAGI.....1ST RESPONDENT

JANE NDEGI NJERU.....2ND RESPONDENT

PATRICK NGARI NJERU.....INTERESTED PARTY

R U L I N G

1. This is a ruling on an oral application made by Mr. Gachuba for the interested party seeking for orders that Mr. Macharia Muraguri for the applicant should step out of this case on grounds of conflict of interest. It was alleged and not denied that Mr. Muraguri commissioned the transfer of L.R. Embu/Kithunthiri/1477 to the interested party. The applicant who is the son of the deceased is represented by Mr. Muraguri.
2. This application came up during the hearing of this suit. The case of the applicant and that of the respondents had closed and it was in the middle of the interested party's case that this issue arose.
3. Mr. Gachuba submitted that Mr. Muraguri should not continue representing the applicant since he commissioned the transfer of the disputed land to the interested party. It was intimated that the interested party may call Mr. Muraguri as his witness in this case.
4. The application was opposed by Mr. Muraguri who told the court that he commissioned the transfer in the year 2013 before he was instructed to act for the applicant in this case. He submitted that he did not draw the transfer but only witnessed it in the cause of his official duties. For this reason, he stated that he cannot be called as a witness of the interested party. It is the interested party who brought himself in this case. As far as the counsel is concerned, there is no conflict of interest.
5. Mr. Lee Maina for the respondents supported Mr. Muraguri's position that there was no conflict of interest involved should he continue representing the applicant. He argued that the case has partly been heard and it is therefore a bit late in the day to introduce the transfer documents and apply that the applicant's counsel removes himself from the case.
6. In reply Mr. Gachuba argued that he had served his replying affidavit on the applicant and the respondents' advocates. In paragraph 10 of the affidavit it was clearly stated that the person who sold the land to the interested party was not dead though referred to as the deceased in this case.
7. The record shows that this application arises from Siakago succession cause No. 37 of 2011. The grant was issued to one Dominic Njeru Njagi and property distributed to seven beneficiaries as shown by the confirmed grant dated 11/07/2014. One of the properties in the grant is L.R. No. Embu/Kithunthiri/1477 which is in dispute in this application.
8. The applicant filed this application for revocation of grant dated 16/09/2014 against the respondents. The interested party later joined in. The hearing of this case commenced on 26/07/2017. The applicant and the respondents' cases were heard and closed the same day. The case of the interested party kicked off on 19/10/2017. However, the witness was stood down on adjournment by his counsel to enable him procure documents to support his case. He had not attached any document to his evidence affidavit. The interested party was to be heard on 22/05/2018 when this issue arose.

9. It is my considered opinion that had the interested party annexed his documents in support of his case well in advance, the issue of conflict of interest would have been addressed before the hearing of the case commenced. Mr. Muraguri has represented the applicant and his case has been fully heard. I agree with the respondents' counsel that this issue is being raised a bit late in the day. The interested party knew all along that the transfer documents had been commissioned by Mr. Muraguri and never raised the issue with his counsel at the earliest time possible.

10. With the case of the applicant and the respondents having closed with the representation of the applicant by Mr. Muraguri, it is a big joke for the interested party to fathom that he can call Mr. Muraguri as his witness.

11. It is my view that the commissioning of a transfer document will not cause conflict of interest on part of the advocate who commissioned it. The transfer document is by itself sufficient evidence if produced by any of the parties who executed it. I am of the opinion that the interested party will be prejudiced in any way by Mr. Muraguri's continued representation of the applicant in this case.

12. I find no merit in this application and direct that Mr. Muraguri continues to represent the applicant in this case.

DELIVERED, DATED AND SIGNED AT EMBU THIS 7TH DAY OF JUNE, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Mrs. Njuguna for Muraguri for Applicant

Ms. Muriuki for L. Maina for 1st and 2nd Respondent

Mr. Gachuba for the Interested Party