



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**IN THE MATTER OF THE ESTATE OF ELIUD NJUGUNA (DECEASED)**  
**SUCCESSION CAUSE 1914 OF 2016**  
**RULING**

**INTRODUCTION;**

On 12<sup>th</sup> June 2016 the Applicant Stanley Njuguna son of the deceased filed application and sought preservation of an asset that comprises of the deceased's estate Ngong/Ngong/1631 which according to the Search at Lands Registry the same is registered in the name of the deceased.

The Certificate of Official Search is attached to Petition dated 8<sup>th</sup> July 2016 which reads;

1. Nature of Title- absolute;
2. Approximate area -1.42 ha;
3. Name and address of Proprietor -Eliud Njuguna Muiru as at 16<sup>th</sup> March 1977 and
4. Land Certificate issued.

The copy of title issued on 16<sup>th</sup> March 1977 of the suit property was attached to the Petition.

The Court preserved Ngong/Ngong/1631 as part of the estate of the deceased under Section 45 of Law of Succession Act Cap 160 until hearing and determination of the matter.

On 19<sup>th</sup> July 2017, the Applicant informed Court that there was ongoing construction despite the Court order. The Respondents through Counsel informed the Court that they were wrongly sued as their property is Ngong /Ngong/7568 and not Ngong/Ngong/1631.

The Court sought the Deputy Registrar to issue Witness Summons and appear in Court and avail records of the 2 suit properties. On 14<sup>th</sup> November 2017 Mohammed Billo Ibrahim; District Land Registrar Kajiado and he stated as follows;

- i) Ngong/Ngong/1631 and Ngong/Ngong/1632 originated from Ngong/Ngong/1444.
- ii) Ngong/Ngong/1631 is registered in the name of Eliud Njuguna Muiru (deceased) According to their records at the Lands Registry, this parcel of land is intact and has not been subdivided.
- iii) Ngong/Ngong/1632 was further subdivided into Ngong/Ngong/2836 and Ngong/Ngong/2837.
- iv) Ngong/Ngong/2836 was subdivided into Ngong/Ngong/3388 & Ngong/Ngong/3389
- v) Ngong/Ngong/3388 was subdivided into Ngong/Ngong/7568 & 7569
- vi) Ngong/Ngong/7568 was registered in the name of Trustees of St Marianna of Jesus- Kenya.

In cross examination the Land Registrar informed the Court that Ngong/Ngong 1631 was/is intact in the name of Eliud Njuguna Muriu (deceased).

According to the records at Lands Office Ngong/Ngong/1631 is 1.42 ha and that is recorded in the Greencard. The ground measurement/mutation by the Surveyor may be different.

Ngong/Ngong/2386 is registered in the name of Simon Patrick Kuria Kimiti.

Ngong/Ngong/3888 was registered in the name of John Ndungu Chege and was subdivided and sold to Simon Patrick Kuria Kimiti.

PW2 Wycliffe Kebaso Surveyor in charge of Kajiado County told the Court that as instructed, he visited Ngong/Ngong/1631 & Ngong/Ngong 7568 and found the following;

i) There was overlap between the 2 parcels;

ii) He found that there were 2 parcels of land not related to the instant parcel Ngong/Ngong/2837 & Ngong/Ngong/3889 as shown by the sketches he drew marked and produced as **Exhibit 15 (a), (b), (c)** respectively of the sites where the 2 parcels of land ought to be.

iii) He found as shown in the drawing that there was an overlap between Ngong/Ngong/7568 and Ngong/Ngong/1631. Also that Ngong/Ngong/7568 and Ngong/Ngong/1631 was in /occupied the same area as Ngong/Ngong/3889, Ngong/Ngong/2837.

The land Surveyor visited the site and found that Ngong/Ngong/2837 is fenced and cultivation ongoing. Ngong/Ngong/7568 is fenced with stone wall and there is ongoing cultivation. Ngong/Ngong/3389 there is ongoing construction.

From the visit, the Land Surveyor realized there were discrepancies between the contents of documents and what he witnessed on the ground with regard to the various parcels of land. The Land Surveyor proposed that the dispute was to be resolved by Land Registrar with regard to Ngong/Ngong/1631 and other parcels of land.

In cross examination, the Land Surveyor confirmed that overlap meant that there land parcels with different numbers and are on the same piece of land on the ground. He admitted that on visiting the site, he could not tell where Ngong/Ngong/1631 was placed and Ngong/Ngong/7568 was and each party pointed out the same spot/area. He stated that there is a process of unravelling this matter.

He told the Court that the demarcation is done in the presence of owners and they are shown for purposes of registration. When the Surveyor visits a site, the parties indicate the property and the survey is done. He said that when owners of land fail to maintain boundaries on the ground, then such scenarios emerge and cases of overlap are common in Kajiado, this is not an isolated case.

Michael Njuguna son of Eliud Njuguna Muriu in cross examining Land Surveyor told the Court that he had and produced maps from the District Land Surveyor, that confirmed Ngong/Ngong/1631 as at 1976. (The documents were removed from the Court file on pretext of photocopying the same and never returned). The Land Surveyor confirmed that Ngong/Ngong/1631 and Ngong/Ngong/1632 emanated from Ngong/Ngong/1444.

Michael Njuguna confirmed that the sale was in 1971 by his late father

Eliud Njuguna Muiru (deceased) and later in 1976 his father witnessed the sale of Ngong/Ngong/1632 to one Wanjiru.

Ngong/Ngong/1632 was 3.2 ha (7.91 acres) and Ngong /Ngong/1632 was 1.42 ha (3.5 acres) according to the drawings he produced from District Land Surveyor's office.

## **DETERMINATION**

The deceased died on 27<sup>th</sup> January 2016, the Petition for letters of administration intestate was filed on 6<sup>th</sup> December 2016 by Administrator Stanley Muiru Njuguna son to the deceased. Among the list of assets that comprise the estate of the deceased is Ngong/Ngong/1631 with copy of title deed issued on 16<sup>th</sup> March 1977 attached and Certificate of Official search of 8<sup>th</sup> July 2016 is attached.

The Court summoned the Land Registrar and Land Surveyor from Kajiado who testified and produced relevant documents as a dispute arose as to what constituted Ngong/Ngong/1631; the property of the deceased available for distribution.

This Court finds as follows; unsurveyed land has no title. For land to be registered; it is surveyed by Land Surveyor; it is extracted from mother Title and Land parcel and the Land Surveyor gives the excised portion a new number. The Land Surveyor reduces the surveyed portion into a mutation form, deed plan and/or General Survey Plan. These documents and Consents from Land Control Board if relevant are presented to the Land Registry for Registration and issuance of title deed.

So since the administrator of the estate of the deceased produced copy of title deed for Ngong/Ngong/1631 issued on 16<sup>th</sup> March 1977 in the absence of any allegation of forgery; the land was surveyed and existed in the name of Eliud Muiru Njuguna. In fact Michael Waithaka Njuguna son of Eliud Njuguna Muiru ( deceased) produced Mutation form and deed plan that proved this fact; that the land was surveyed from title Ngong/Ngong/1444 into Ngong/Ngong/1631 and Ngong/Ngong/1632. The land was surveyed by Land Surveyor in 1976 and reduced in the said mutation with the general boundaries.

Secondly, the Land Registrar confirmed from documents produced in Court as Exhibits as follows;

- a) Form of Ngong /Ngong/1631 (Green card copy for 1631)Ex 1
- b) Form of Ngong/Ngong/7568 (Green Card copy)–Ex 2
- c) Letter of Consent Form- Ex 3
- d) Application for Consent Form-Ex 4
- e) Land Certificate Ngong/Ngong/1631-Ex 5
- f) Letter of Consent of 4<sup>th</sup> August 1987-Ex 6
- g) Copy of Transfer Form Ngong/Ngong/7568 –Ex 6
- h) Copy of Transfer Form Ngong/Ngong/1631-Ex 7
- i) Copy of investigation Form Ngong/Ngong/1631-Ex 8
- j) Copy of Transfer Ngong/Ngong/7568- Ex 10
- k) Copy of title Ngong/Ngong/7568- Ex 11

Therefore, if documents from Lands Registrar as illustrated above confirm that Ngong/Ngong/1631 existed and is still in existence as per the Green Card from 1977; after this portion was excised from subdivision of Plot 1444 to 1631 and a title document was issued to Eliud Njuguna Muiru on 16<sup>th</sup> March 1977; then if the registration was legally done as per the documents produced in Court; did the land Registrar register air? That is how come documents from Lands Office especially the Green card show /confirm that Ngong/Ngong/1631 exists from 1977 what happened that now it does not exist? If the land was not surveyed how come there are boundaries and a valid title document for Ngong/Ngong/1631? Where did the number Ngong/Ngong/1631 come from if no survey was conducted?

The green card for Ngong/Ngong/1631 has the only and last entry as Eliud Njuguna Muiru; ‘Title issued’ and ‘Charge in terms of Section 70’ and that is all. The green card for Ngong/Ngong/7568 shows it was hived off Land Parcel 3888 belonging to John Ndungu Chege as at 18<sup>th</sup> August 1986 and later sold on 3<sup>rd</sup> September, 1987 and title issued. The portion was sold to Congregation of Sisters of St Marianna of Jesus (Kenya) in 2013 and title deed issued on 8<sup>th</sup> February 2013.

From the documents lodged in Lands Office Ngong/Ngong/1631 and Ngong/Ngong/7568 are separate and not the same depicted on the ground by the Land Surveyor’s drawings Field Sketches produced as **Exhibits- 12 (1) (2) & (3)**. Clearly, Ngong/Ngong/1631 is occupied by Parcels Ngong/Ngong/7568 partly, Ngong/Ngong/2837 partly and fully on Ngong/Ngong/3889 as depicted by markings K1-K7 on the **Sketch Diagram Exhibit 12 b**.

From the Surveyor’s Report of 11<sup>th</sup> June 2018 received on 7<sup>th</sup> August 2018, he clearly states that;

**DATUM**

- a) Copy of mutation Ngong/Ngong/1306 ( 1444-1445)
- b) Copy of mutation Ngong/Ngong/1444 ( 1631-1632)
- c) Copy of mutation Ngong/Ngong/ 1632 ( 2836- 2837)
- d) Copy of mutation Ngong/Ngong/ 2836 ( 3888-3889)
- e) Copy of mutation Ngong/Ngong/ 2888 ( 7568- 7569)

But produced Mutation Form for Ngong/Ngong/1632 of 11<sup>th</sup> April 1976 and Mutation Form dated 9<sup>th</sup> February 1972 for Ngong/Ngong/1444 subdivided into plots Ngong/Ngong/1631 and Ngong/Ngong/1632. The hectares are written cancelled and overwritten and not countersigned; that is they are tampered with.

From the evidence above; it is clear that since the Land Survey Office that surveyed these parcels of land, made boundaries, gave new numbers and issued mutation forms and they were duly registered with the Lands Registry Office; Ngong/Ngong/1631 exists to date as per the mutation form, the green card and copy of title. If it does not exist on the ground due to alleged overlap and the other parcels were also surveyed by Land Survey Office personnel, then the buck stops with Land Survey office to confirm where and when Ngong/Ngong/1631 disappeared to and whom is responsible.

**DISPOSITION**

- 1) In the absence of this explanation or proposal on the way forward, this Court finds that estate of the deceased Eliud**

Njuguna Muiro is entitled to Ngong /Ngong/1631 as per the copy of title that is written his name, the green card and mutation forms. The said property is available for distribution by beneficiaries of the deceased's estate.

2) All other occupiers and alleged owners of the part that comprises of Ngong/Ngong/1631 in the sketch ki-k5 by Land Surveyor are trespassers and should vacate the said portion of land forthwith. They can pursue their claim from the vendors in the Environment and Lands Court.

3) Law Enforcement Agencies to supervise enforcement of this order and the Estate of Eliud Njuguna Muiro to realize their property Ngong/Ngong/1631 in the absence of an appeal to the Court of Appeal.

**DELIVERED DATED & SIGNED IN OPEN COURT ON 18<sup>TH</sup> OCTOBER 2018.**

**M. W. MUIGAI**

**JUDGE-FAMILY DIVISION**

**IN THE PRESENCE OF;**

**MRS KINYUA FOR RESPONDENTS**

**MUREITHI KIMANI & KARERE ADV FOR APPLICANTS**