



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCCESSION CAUSE NO. 33 OF 1992
IN THE MATTER OF THE ESTATE OF M' MUTUNGI (DECEASED)
JEREMIAH KIRIMI MUTUNGI.....PETITIONER

-VS-

GIDEON KAUMBUTHU MENYE.....OBJECTOR

SOLOMON MUTHAURA.....OBJECTOR

JUDGMENT

Mis-description of property

[1] I partially considered the Application dated 13th May 2013, and delivered a ruling on 8th November 2017, in which I noted *inter alia* that despite both parties being elaborate in the documents filed in court, there was missing subtle information to guide the court in ascertaining whether or not the numbers stated refer to one and the same parcel of land. Consequently, the court directed Mariara Farmers Cooperative Society to furnish the court with their records and correspondences relating to both Laikipia/Nturukuma/923 and Nanyuki/Marura Block 8 (Nturukuma)/66. The court further directed the Land Registrar within 30 days to furnish the court with records of land parcel Laikipia/Nturukuma/923 and Nanyuki/Marura Block 8 (Nturukuma)/66 since inception and give details of issuance of the first or subsequent title and current status of the said lands. The society obliged and provided useful information and documents. I am now properly equipped to deal with the said application with finality.

I am now ready

[2] I am now ready to deal with the Summons dated 13th May 2013 which is expressed to be brought under Rules 63 and 73 of the Probate and Administration Rules, Section 45 (1) of the Law of Succession Act CAP 160 and Section 68 of the Land Registration Act 2012, and seeking the following orders:

- 1) **Review of orders herein dated 12th July 2004 as stated by Applicant**
- 2) **Reference therein to land parcel number Laikipia/Nturukuma/923 be changed to refer to land parcel number Nanyuki/Marura Block B (Nturumuka)/66 as currently registered.**
- 3) **The said parcel number Nanyuki/Marura Block B (Nturukuma)/66 be deemed part of the estate of the deceased of the late M' Mutungi M' Inoti and the same be administered as such in this succession cause.**
- 4) **The registration of one Solomon Muthaura as the proprietor of the said L.R No Nanyuki/Marura Block 8 (Nturumuka)/66 be cancelled and the same registered in the name of the deceased herein M' Mutungi M' Inoti.**
- 5) **Production of the original title deed (s) be dispensed with and all restrictions, cautions, inhibitions and/or prohibitions be lifted to facilitate the land in the name of the deceased.**
- 6) **Inhibition orders do issue against L.R No. Nanyuki/Marura Block B (Nturukuma)/66 pending the hearing and determination of this application in the interim and ultimately after compliance with order No. 5 above pending the hearing and determination of the Objector herein.**

7). Costs be provided for.

The issue

[3] The issue here is:-

1. Whether land referred to as parcel number Laikipia/Nturukuma/923 is the same as land parcel number Nanyuki/Marura Block B (Nturukuma)/66.

[4] Doreen Makena Mwebia the Chief Executive Officer of Mariara Farmers Cooperative Society Limited (the Society) swore an affidavit on 24th August 2018 and deposed:-

1. That the Society through sale of shares to its members bought Nturukuma a farm within Laikipia County, sub divided it and upon payment of membership fees, each member was issued with a ballot membership number which entitled one to ballot for the land.

2. That the deceased herein, M' Mutungi was one such member whose ballot number was 923 and balloted for parcel of land then commonly referred to as Laikipia/Nturukuma/923.

3. That when the deceased died, his share of land was transferred to his sons James Muriungi and Jeremiah Kirimi- persons named as his next of kin in the records of the Society.

4. That sometime in the year 1996 about 10 years after the death of the deceased, his sons came to the office and claimed that a person by the name of Daniel Kirima had invaded their land. They summoned both parties and in the meeting the said Mr. Kirema alleged to have bought the land from their late father.

5. That they requested both parties to appear before the management committee which will arbitrate over their dispute but on the appointed day, Mr. Kirema failed to turn up and after the minutes of the meeting was confirmed on 14th November 1996, a letter was written to the said Mr. Kirema asking him to vacate the land.

6. That on or about 6th September 2003, they received a letter from G.K Meenye Advocate, the Objector herein instructing them to register the said parcel No. Laikipia/Nturukuma/923 in the name of his nominee, Solomon Muthaura of Identity Card No. 7465821 as per the orders of the court dated 22nd October 2002 and upon payment of the requisite transfer fees, the transfer on or about 10th September 2003.

7. That, on or about 10th September 2004, they were served with yet another court order dated 12th July 2004, setting aside the earlier orders of 22nd October 2002 and nullifying the transfer they had effected in their register as a result of which they cancelled the name of Solomon Muthaura and restored the names of the next of kin of the late M' Mutungi M' Inoti who were, James Muriungi M' Mutungi and Jeremiah Kirimi M' Mutungi and since the lands office was ready to issue title deeds, they forwarded their register bearing the names of James Muriungi M' Mutungi and Jeremiah Kirimi M' Mutungi as the owners of Title Number 66 emanating from their father's Membership/Ballot No.923.

9. That neither Solomon Muthaura nor the Objector was a member of the Society or holder of any ballot number. Only the deceased M' Mutungi M' Inoti was a member of the Society and holder of ballot Member number 923 and he balloted for title number 66 on the ground and in the map. Parcel No. Laikipia/Nturukuma/923 and land parcel number Nanyuki/Marura Block 8 (Nturukuma)/66 referred to one and the same parcel of land which was the share of the late M' Mutungi M' Inoti as was evident from the register though the land had changed ownership severally from the late M' Mutungi M' Inoti to his sons who were named next of kin in the society and Solomon Muthaura by virtue of court orders.

[6] From these averments and the register of members provided amongst these parties only the deceased M' Mutungi M' Inoti was a member of the society whose ballot number was 923 and balloted for parcel of land then commonly referred to as Laikipia/Nturukuma/923. The Society has confirmed that the deceased had only one share and his share is in title number 66 on the ground and in the map, parcel no. Laikipia/Nturukuma/923 and land parcel number Nanyuki/Marura Block 8 (Nturukuma)/66 refer to one and the same parcel of land which was the share of the deceased. It is common knowledge that societies or land buying companies issue ballot numbers to members for purposes of balloting for land in the society or company. Each ballot bears special numbers and is noted in the register. See the register. From explanations by Doreen, upon ballot, the specific land balloted for is identified by the ballot number of the member. This reference became the land reference number in the society's register for the land balloted for by the particular member. But, upon registration of the subdivisions, the land is assigned an official land reference number for purposes of title which is different in most cases from the initial number issued by the society for purposes of balloting. The number changes but the land is the same. This is the case here. The reference number provided was on the basis of the ballot number and before registration of title of the land in issue. Such initial description of estate property should be amended under the law. It bears repeating that, at the time of the ruling of 12th July 2004, the new title number was not available, hence, the description thereto of the suit land. This changed and new official numbers were assigned to the property. It is also worthy to state that, from the record and evidence adduced neither Solomon Muthaura nor the Objector herein were members of the Society or holders of any ballot numbers. None has any claim to the land in issue or any other parcel of land within Nturukuma farm. Only the deceased is proprietor of the suit land. Muthaura's claim in the property was rejected by the court and his registration on the basis of orders of 22nd October 2002 was nullified in the ruling of 12th July 2004.

[7] Without much ado, what is of significance to this court is that there is an error in the description of the estate property which requires rectification. The confusion arising from the wrong description of the estate property should come to an end. And, a party should not cling to

or continue to reap benefit or stake a claim from such clear mis-description of property. Accordingly, the application by the Petitioner/Applicant Jeremiah Kirimi Mutungi dated 13th May 2013 is meritorious and I allow it in the following specific orders.

1) Reference in orders of 12th July 2004 of land parcel number Laikipia/Nturukuma/923 is amended to refer to land parcel number Nanyuki/Marura Block B (Nturumuka)/66.

3). The said parcel number Nanyuki/Marura Block B (Nturukuma)/66 is and part of the estate of the deceased, late M' Mutungi M' Inoti and shall be administered as such in this succession cause.

4). The registration of one Solomon Muthaura as the proprietor of the said L.R No Nanyuki/Marura Block 8 (Nturumuka)/66 be cancelled and land to revert back into the name of the deceased herein M' Mutungi M' Inoti.

5). Production of the original title deed (s) be dispensed with and all restrictions, cautions, inhibitions and/or prohibitions are lifted to facilitate the registration of the said land in the name of the deceased.

6). Costs to the applicant.

Dated, signed and delivered in open court at Meru this 4th day October 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Abubakar advocate for Thuku for Respondent

Mr. Kithinji advocate for Mr. Mwarania advocate for petitioner-

F. GIKONYO

JUDGE