



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 286 OF 2013

IN THE MATTER OF THE ESTATE OF MUCHAI MUNIU A.K.A. MBATIA MUNIU (DECEASED)

SAMUEL CHEGE NGANGA.....1ST APPLICANT

WANGANGA GITICHIA.....2ND APPLICANT

MUNIU GATHURA.....3RD APPLICANT

DAVID GATHURA MUNIU.....4TH APPLICANT

VERSUS

JACKSON MUNIU MBATIA.....RESPONDENT

RULING

1. The deceased Muchai Muniu alias Mbatia Muniu died intestate on 4th March 1969. He was survived by only one child, Jackson Muniu Mbatia (the respondent). A grant of letters of administration intestate was issued to the respondent on 21st May 2009 and the same confirmed on 21st January 2010 in **Probate & Administration Case No. 54 of 2008** at Githunguri Law Courts. The respondent was named as the sole beneficiary of the estate of the deceased.

2. The applicants filed summons dated 11th February 2013 seeking the revocation of the grant issued to the respondent on 21st May 2009 and confirmed on 21st January 2010. The application also sought a temporary injunction restraining the respondent, his agents, employees, servants or any other person from interfering with their quiet and peaceful occupation of the parcels of lands referred to as Githunguri/Gathangari/T.448 and Githunguri/Gathangari/52 pending the hearing and determination of the present application. They further prayed that the court sets aside orders for lifting the caution they lodged on the said properties. The application was based on the grounds that:

- a) the 2nd applicant's father (Muniu Gathura) (deceased) and the 1st and 3rd applicants' father (Wang'ang'a Gitiche) (deceased) bought the two suit properties from the deceased sometimes on 3rd October 1965;
- b) both deceased purchasers had executed a sale agreement prior to their deaths but did not effect the transfer of the said parcels to their favour and that the buyer and the seller died before conclusion of the transaction;
- c) the respondent had agreed to transfer the properties to the beneficiaries of the deceased purchasers but failed to effect the transfer, forcing the applicants to place a caution on the two properties;
- d) that the applicants and their fathers enjoyed quiet and uninterrupted occupation on the suit properties since 3rd October 1965 until 4th June 2010 when the 2nd applicant's father died;
- e) the respondent has threatened to evict the applicants from the two properties and has sent his agents who have continuously interrupted their quiet possession of the said properties;

f) that the respondent used falsified title deeds to establish ownership of the suit properties;

g) the respondent failed to include the applicants as beneficiaries of the estate of the deceased in his petition for letters of administration; and

h) the respondent failed to disclose material information regarding the ownership of the two properties to the court at Githunguri in his petition for the letters of administration.

The application was supported by the joint affidavit of the applicants dated 11th February 2013.

3. The application was opposed by the respondent through his replying affidavit dated 16th June 2013. His case was that he was the sole administrator and also the sole beneficiary of the estate of the deceased pursuant to Magistrates Court at **Githunguri Succession Cause No. 54 of 2008**; that the said succession cause was published in the Kenya Gazette in the usual manner and there was no objection filed by the applicants; that when the grant was confirmed, the two properties comprising the estate of the deceased namely, L.R. Githunguri/Gathangari/T.448 and L.R. Githunguri/Gathangari/52 were transferred to his name by transmission as the sole beneficiary of the estate; that he caused the District Land Registrar Kiambu to notify the applicants about removing the caution they had placed on the mentioned 2 properties claiming purchasers' interest so that he may transfer the same to his name; that the cautions were finally removed and the two properties registered in his name; that he has already sold LR Githunguri/Gathangari/52 to Francis Mwangi Mukoma and a title issued to him on 7th December 2012 and sold L.R. Githunguri/Gathangari/T.448 to one Hannah Muthoni Kihara and title issued on 13th December 2012.

4. Parties filed their submissions in support of their cases which I have considered.

5. The jurisdiction of a court dealing with a succession matter is to ascertain the beneficiaries and the estate of the deceased person, and to determine and distribute the shares of the estate to the respective beneficiaries. The court cannot be called upon to determine a dispute between the deceased and third parties regarding the ownership of a piece of land. Such a dispute can only be heard and determined by a court established under **Article 162(2)(b)** of the Constitution of Kenya 2010 and **section 13** of the **Environment and Land Act (Cap.12A)**. So, whether the agreement of sale of the parcels between the deceased and the applicants' fathers were valid or void is a matter this court cannot hear or determine. Now that the estate of the deceased has an administrator, the applicants shall be at liberty, in an appropriate forum, to pursue their claim over the parcels.

6. It is also material that the two parcels of land that formed the estate of the deceased have since been transferred to third parties who did not participate in this application. An order to revoke the confirmed grant would affect them without affording them a hearing. If the applicants seek to challenge the ownership of the parcels in the Environment and Land Court they will have to join them in a suit filed against the respondent.

7. In all, the application is dismissed with costs.

DATED and DELIVERED at NAIROBI this 19TH NOVEMBER 2018

A.O. MUCHELULE

JUDGE