



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE NO. 134 OF 2011

In the matter of the Estate of JACOB M'MIRU (Deceased)

GICHOBI JACOB.....1ST APPLICANT
NJAGI JACOB.....2ND APPLICANT
IRERI JACOB (DCD).....3RD APPLICANT
KARIUKI JACOB.....4TH APPLICANT
NYAGA JACOB.....5TH APPLICANT

V E R S U S

ELIZABETH MUTITU JACOB (DCD).....1ST RESPONDENT
JANE MUTHONI JACOB.....2ND RESPONDENT
MARGARET WANJIRA JACOB.....3RD RESPONDENT

R U L I N G

1. The application dated 5/09/2018 seek for orders that the District Land Registrar be compelled to vacate, lift and/or remove the restrictions or any other encumbrances placed on L.R. Ngandori/Kirigi/17.
2. The grounds supporting the application are that the applicants are the absolute proprietors of the land L.R. Ngandori/Kirigi/17. The respondents have placed restrictions against the title without any colour of right since their interests in the land was not validated by the court in its ruling for the application to revoke grant dated 13/10/2016.
3. Before filing this application, the applicants had approached the respondents to remove the said restrictions but things did not work out as intended.
4. The 2nd respondent Jane Muthoni in her replying affidavit deposes that she has the authority of the 3rd respondent and one Charles Mwaniki to swear the affidavit in opposition to the application.
5. The gist of the affidavit is that the 2nd and 3rd respondents and Charles Mwaniki Kimotho are children of the deceased and are entitled to shares in the land L.R Ngandori/Kirigi/17.
6. That Charles Mwaniki occupies a part of the land which was occupied by their mother the 1st respondent herein before she died.
7. It is further deponed that a meeting was held at the District Commissioner's office, it was resolved that the applicants will not evict Charles Mwaniki from the portion he occupied.
8. The applicants have annexed copies of register of L.R Ngandori/Kirigi/17 showing that the land is in their names. The court record shows that this case was concluded through the ruling on the application dated 13/10/2016 for revocation of grant. It was brought by the applicants for revocation of the grant issued in this case in respect of L.R Ngandori/Kirigi/17 to the 1st respondent and confirmed on 27/11/2014.

9. The 1st respondent had presented the land of the applicants for distribution purporting that it belonged to the deceased Jacob M'Miru. In the course of hearing the application the court learnt that the deceased did not own any asset for distribution to his widow and children. The land was registered in the names of the applicants who are the sons of the deceased.

10. The application was successful and the grant was revoked by the court in its ruling delivered on 28/11/2016.

11. The respondents did not appeal against the ruling but have been litigating before the area Sub-County Commissioner on the burial place of their late mother and on protecting Charles Mwaniki from being evicted from the land.

12. From the minutes of the said meeting held on 22/01/2018, the parties reached an amicable solution that the 1st respondent be buried on the land. In my view, the said proceedings have no bearing to this case since the settlement of the burial place of any of the parties does not alter the findings of the court on the revocation of the grant.

13. The status of this case is that it was finally determined in the court's ruling delivered on 28th November 2016 revoking the grant given to the 1st respondent.

14. However, I have looked at the annexures of the applicants being copies of register showing that the restrictions were placed by 1st, 2nd respondents and the said Charles Mwaniki on 27/01/2015 when this case was still on-going. For that reason, this court is seized of the jurisdiction to deal with this application on the subject or removal of cautions/restrictions.

15. It is not in dispute that the land LR. No. Ngandori/Kirigi/17 belongs to the applicants for they have ownership documents. The respondents have not demonstrated that they have any legal interest in the land. There is no land dispute pending in any court between the parties to justify the continued existence of the restrictions.

16. Furthermore, this case substantially ended with the revocation of grant in respect of Ngandori/Kirigi/17 for there was no other asset left for distributing.

17. I am of the considered opinion that the respondents have not offered any justification for the continued existence of the restrictions after the grant to the 1st respondent was revoked.

18. I find the application merited and allow it as prayed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 6TH DAY OF NOVEMBER, 2018.

F. MUCHEMI

J U D G E

In the presence of: -

1st, 4th and 5th Applicants

3rd Respondent