



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 335 OF 2003

IN THE MATTER OF THE ESTATE OF M'RINGERA M' ARIMI (DECEASED)

AMENDEO KIOGORA.....PETITIONER

FESTUS MUTHAURA AMENDEO.....APPLICANT

-Versus-

JENIFFER GATABI KIOGORA.....OBJECTOR

RULING

[1] By a Chamber Summons dated 24th June 2015, the Applicant sought inter alia:-

- a. An order to declaring transfers in respect of LR NO. Ntima/Ntakira/2948 and Ntima/Ntakira 2953 to be illegal and fraudulent***
- b. An order of rectification of the register to revert the above parcels of land into the names of the deceased herein and***
- c. An order to include the said two parcels of land in the list of assets of the deceased for purposes of distribution to all the beneficiaries in this matter.***

[2] The gist of the application was that the transfer was illegal and fraudulent, having been done long after the death of his grandfather (the deceased). The applicant also stated that these assets had only become known to him recently and that it was only proper for these assets to be included in the list of the assets of the deceased to enable fair distribution among the deceased's dependants.

[3] In a ruling delivered by this court on 19th January 2018, the court noted inter alia that the matters raised in the application required oral and documentary interrogation for the court to be properly grounded in making its final decision. Viva voce evidence was accordingly adduced.

[4] PW1 was Festus Muthaura Amendeo. It was his evidence that the deceased died on 10th May 1997, as per death certificate obtained by the original petitioner. He further testified that he did not have the burial permit nor the eulogy or minutes of burial preparation or programme thereof. It was his further evidence that the certificate of death No. 817034 was "manufactured" and that he did not have any documents to show that he had surrendered identity card of the deceased. It was his further evidence that Rosalia wife of the deceased surrendered the identity card. It was his further evidence that the two parcels of land were fraudulently transferred and that the deceased did not register any land in joint ownership and that their parcel of land was jointly owned by the deceased and his son called Edward Gitonga who passed away before the deceased. It was his further evidence that the deceased only sought consent to transfer 3 parcels except 2853 and 2948 which he left as his name.

[5] M' Ringera M' Arimi, Evangeline Mwarania Kiohora and Doris Naitore M' Arimi all filed witness statement contending that they were grandson and daughter respectively of the deceased and that their father, the original petitioner who was now deceased had two wives Jennifer Gatabi Amendeo (2nd wife) and their mother Stella Mataria Amendeo (1st wife), and that since their father was alcoholic, their grandfather overheard him say he would sell the land and throw the family on the road and that he decided to share his land to the grandsons including his son (their father) but they were not given any land and much of the land that remained in their grandfather's name after he died ended up being transferred illegally to the sons of the 2nd wife to deny them share.

[6] Lawrence Kirugi on the other hand filed a witness statement in court 27th March 2018, contending that he knew the deceased who was the petitioner's grandfather and the objectors father in law and that he died on 14th July 1998 and not 10th May as alleged by the petitioner.

[7] It was submitted for the Applicant that it was evident from the record that there were two versions of the date of death of the deceased and respondent had totally failed to inform court how they obtained a copy of death certificate showing that the deceased died on 47th July 1988 and that some properties had been transferred to the beneficiaries before the deceased died and that the deceased had not in any way transferred any of his property to joint owners as evident from Ntima/Ntakira/2950 registered to individual share to Lawrence Mureti Amedeo who was then a minor and also Ntima/Ntakira /2952 share that of his step brother LR Ntima/Ntakira/2949 for Jediel Mugambi Muchai.

[8] On the other hand it was submitted for the Respondent that with regard to land parcel No. Ntima/Ntakira/2952, the same was transferred to the applicant by the deceased on 18th May 1998, long after he transferred parcel number 2953 that he was complaining of which was transferred on 14th May 1998 though he sold it off 45 days later and that he was not complaining about that transfer to himself. It was further submitted that it was absurd for the applicant to want to take advantage of the error in the petition about the date of death which has already been corrected by the court yet he did not appeal against the orders allowing the application for correction dated 12th June 2009, nor was he complaining about a later transfer of another parcel of land to himself by the same deceased which was much later than the one he is challenging.

[9] I have carefully considered the evidence on record and the submissions by the parties. PW1 in his evidence stated that death certificate number 817034 was "manufactured". He further testified that he did not have any documents to show that he surrendered the identity card of the deceased. In cross examination, he stated that the ATM card for Standard Bank issued to the deceased was "manufactured." He further stated that he disagreed with the entry made on 30th April 1998, on the deceased's passbook for his savings account with Meru Central Farmers cooperative union and that he as well disagreed with the signature for the objector to have access to his account on 24th April 1998 and that this was also "manufactured".

[10] Save for making general allegations, the Applicant's case was not supported by any evidence. In his evidence in chief, he admitted that he did not have any burial permit or minutes of burial preparation or programme thereof to support his claim. He further admitted that he did not have any document to show that he surrendered the deceased's identity card as required by law. He, however, contended that the certificate of death No. 817034 was "manufactured". He however did not state who "manufactured" it or provide particulars thereof. He further testified that the two lands were fraudulently transferred. He again he did not state who was involved in the alleged fraud. Similarly his allegation that the ATM card for standard bank that was issued to the deceased on 10th February 1998 was manufactured was not supported by any evidence. He also disagreed with the entry on the deceased's passbook on 30th April 1998 without giving any reasons thereto or basis for his disagreement.

[11] The applicant made serious allegations of fraud. He ought to have armed himself with cogent evidence to prove fraud. He did not state who perpetrated this fraud. He did not provide evidence that he had even reported these serious allegations to the relevant authorities. No specific or any particulars of fraud were stated or provided to court. It is trite law that the standard of proof required to prove allegations of fraud is higher than the ordinary standard of proof required in ordinary civil cases. Having failed to discharge this burden, the applicant's application must fall by the wayside.

[12] The documents produced by the Respondent show that the ID card for the deceased was duly surrendered and in its place Certificate No. 817034 was issued as required by law. All pointers show that the death certificate filed in court by the original petitioner was not grounded on proper documentation or procedure. It may be a forgery. After hearing the applicant, his major misgiving is that the house of the respondent has many children and so will get more land than them. This is misconceived notion as section 40 is clear on distribution where the deceased was polygamous. That notwithstanding, by whatever yardstick, the Applicant's application dated 24th June 2015 is without merit and accordingly it is dismissed.

[13] This being a succession matter there will be no order as to costs.

Dated, signed and delivered in open court at Meru this 11th day of December, 2018

F. GIKONYO

JUDGE

IN PRESENCE OF

Karanja for Mwenda for objector

Petitioner in person – present

Objector – present.

F. GIKONYO

JUDGE