



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2622 OF 1999**

**IN THE MATTER OF THE ESTATE OF MUIRU GIKANGA (DECEASED)**

**PETER NJOGU TURUGA.....1<sup>ST</sup> APPLICANT**

**PETER KINUTHIA MWANIKI.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**HUMPHREY GITHAIGA MUIRU...ADMINISTRATOR/RESPONDENT**

**RULING**

1. The deceased Muiru Gikanga died intestate on 29<sup>th</sup> September 1982. A grant of letters of administration intestate was made to Humphrey Githaiga Muiru (the respondent) on 20<sup>th</sup> June 2000 and confirmed on 28<sup>th</sup> November 2001.

2. The applicants filed the present summons dated 7<sup>th</sup> November 2017 seeking leave to be joined as interested parties in this suit and seeking revocation of the grant made to the respondent on 20<sup>th</sup> June 2000 and confirmed on 28<sup>th</sup> November 2001. The application was based on the grounds that:

- a) the applicants are beneficiaries of the estate of the deceased and have an interest in the ownership of Limuru/Bibirioni/1602;
- b) the grant was obtained fraudulently by making of a false statement and by concealment from the court of material information; and
- c) the grant was issued and confirmed without the involvement of the applicants.

The application was supported by the joint affidavit of the applicants. They stated that they were beneficiaries of the deceased by virtue of being the grandson and great grandson of the deceased and that they have been in occupation of the said parcel since 1986. They further stated that they had filed a suit for adverse possession in the Environment and Land Court **ELC No. 1308 of 2014**.

3. The application was opposed by the respondent through his replying affidavit dated 30<sup>th</sup> November 2017 and 23<sup>rd</sup> March 2018. It was his case that he was a stranger to the claims of the applicants being beneficiaries of the estate of the deceased by merely stating that have an interest in Limuru/Bibirioni/1602; that said property was registered in the name of the deceased; that the said property is registered in his name as the administrator of the estate of the deceased in trust for the beneficiaries of the estate of the deceased who do not include the applicants; that the applicants are grandson and great grandson to the late Kinuthia Gikanga hence have no legal standing to lay any claim over the estate; that the grant made to him was long confirmed and has never been objected to by any of the beneficiaries; that he did not conceal any material facts to the court in petitioning the court for the grant; and that the grant was confirmed with the consent of all the beneficiaries of the estate of the deceased.

4. On 26<sup>th</sup> January 2018, the respondent filed a notice of preliminary objection to the application dated 7<sup>th</sup> November 2017 on the grounds that:

- a) the applicants were strangers to the estate of the deceased as they are not heirs or direct beneficiaries nor dependents within the meaning of **section 29 of the law of succession act**;

b) the allegation of the applicants being the legal representatives of the estate of Fredrick Mwaniki and Nicholas Macharia is not well founded as the wives of Fredrick Mwaniki and Nicholas Macharia (Margaret Wanini and Elizabeth Wangari) are on record in their applications dated 16<sup>th</sup> May 2016 wanting to be enjoined as beneficiaries to the estate of the deceased;

c) the applicant's claim seems to be over Limuru/Bibirioni/1602 and they have disclosed that they have already filed a suit in the Environment and Land Court under **ELC No.1308 of 2014** claiming for adverse possession and their remedy lies in the Environment and Land Court and not in this family court as the family court lacks jurisdiction to handle the matter;

d) the subject property belongs to him as the administrator of the estate of the deceased by virtue of the same being a first registration and the same has never been sold to any other person; and

e) the application is an afterthought meant to cause annoyance to him and amounts to wastage of the court's time and should be struck out.

5. The applicants filed an affidavit of John Wilfred Njenga Kamau dated 20<sup>th</sup> February 2018 in response to the notice of preliminary objection. John Wilfred Njenga Kamau stated that the respondent was his first cousin since his father was the deceased's half-brother; that the applicant are grandsons of Kinuthia Gikanga (deceased) who was a brother to the deceased and to his father; that the applicants were therefore his nephews and the nephews of the respondent; that the said property has been under effective occupation and use by the 1<sup>st</sup> applicant's mother (the late Grace Wairimu) and the 2<sup>nd</sup> applicant since 1986; and that the said property accrued to Grace Wairimu Nganga and Kinuthia Mwaniki as their share of the estate of the patriarchy of the family being Kinuthia Gikanga hence he respondent had no beneficial interest in the said property.

6. Parties filed their written submissions which I have considered.

7. It is now acceptable that the court can, at any stage of the proceedings, upon application by either party or on its own motion, order the name of the person who ought to have been joined or whose presence before the court is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit, to be added or joined as a party (**Attorney General v Kenya Bureau of Standards & another [2018] eKLR**).

8. It is also trite that an applicant cannot be allowed to litigate over the same subject matter against the same respondent in two different courts at the same time (**Theluji Dry Cleaners – Muchiri & Others [2002]L KLR 764**). The applicants admit that in **Environment and Land Court ELC No. 1308 of 2014** they served the respondent claiming adverse possession in respect of this parcel Limuru/Bibirioni/1602. The dispute has not been determined. They have a claim regarding the ownership of this land. Pursuant to **Article 162(2)(b)** of the Constitution of Kenya, 2010 and **section 13** of the **Environment and Land Act (Cap. 12A)** they are in the proper court. This court has no jurisdiction to deal with their claim of ownership.

9. Consequently, the bid to join this cause is rejected. This court lacks jurisdiction. Secondly, the application is an abuse of the process of the court. It is dismissed with costs.

**DATED and SIGNED at NAIROBI this 11<sup>TH</sup> day of DECEMBER 2018**

**A.O. MUCHELULE**

**JUDGE**