



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 667 OF 1994

IN THE MATTER OF THE ESTATE OF JACKSON MIHANG'O NJUGUNA (DECEASED)

MICHAEL NJOROGE MIHANG'O.....APPLICANT

VERSUS

JAMES MBURU NJUGUNA.....1ST RESPONDENT

PETER GUCHU KARANJA.....2ND RESPONDENT

LANDS REGISTRAR MURANG'A.....3RD RESPONDENT

MWIREIRI ESTATE LIMITED.....4TH RESPONDENT

RULING

BACKGROUND

1. Jackson Mihang'o Njuguna whose estate these proceedings relate died intestate on 15th November 1992 while domiciled in Kenya. The deceased left behind children then aged below 18 years namely:-

- (1) SKM – Son (17 years)
- (2) NWM – Daughter (12 years)
- (3) GNM – Son (10 years)
- (4) MNM – Son (8 years)
- (5) DTM – Son (6 years)
- (6) JNM – Daughter (4 years)

2. The following assets were listed as properties comprising the estate of the deceased:

- (1) Standard Bank Thika A/C No. [...]
- (2) Mwireri Estate Ltd (1972) No. [...] Shares Worth 5,500/=
- (3) Mwichwiri Flowers Co. Ltd Plot No. [...] Nanyuki – 8000/=
- (4) ½ an acre land No. Loc.49/Ngararia/[...] – 100,000/=

(5) Redio Sanyo Permit No. [...] – 4000/=

(6) Bicycle Frame No. [...] – 7,000/=

3. On 26th April 1993, James Mburu Njuguna and Mary Wanjiru Mburu petitioned for a grant of letters of administration intestate. Consequently, a grant was made and issued on 13th July 1994 to the two petitioners jointly. The said grant was subsequently confirmed on 16th June 1995 and the estate shared out as hereunder:

(1) James Njuguna to get 0.25 acres out of Plot Loc.4/Ngarari/114

(2) James Mburu Njuguna and Samuel Kinuthia Mihang'o to hold in trust 0.25 acres out of Loc.4/Ngararia/[...] for:

(a) SKM

(b) NWM

(c) GN

(d) MN

(e) DT

(f) JN

(3) James Mburu Njuguna and Mary Wanjiru Mburu to utilize Kshs 20,292 in Kenya Commercial Bank Thika for the maintenance of the dependants of the deceased.

(4) James Mburu Njuguna and Mary Wanjiru Mburu to hold in trust shares in Mwireiri Estate Ltd in trust for:

(a) SKM

(b) NWM

(c) GN

(d) MN

(e) DT

(f) JN

4. On 25th May 2017, Michael Njoroge Mihang'o, on his behalf and that of his siblings moved the court vide notice of motion dated 24th May 2017 and filed on 25th May 2017 seeking orders; that the grant and certificate of confirmation of grant herein issued on 13th July 1994 and 16th July 1995 respectively be revoked or annulled; that the petitioners to account for all the assets of the estate of Jackson Mihang'o Njuguna and lastly; stay of enforcement or execution of the orders pursuant to the confirmed grant.

5. The application was predicated upon grounds that the petitioners had failed to administer the estate as per the confirmed grant. He claimed that the two respondents had squandered, misappropriated, wasted and illegally retained assets of the estate of the deceased in total breach of trust.

6. In reply to the said application, the respondents filed a replying affidavit deponed by James Mburu Njuguna on 17th July 2017 and filed on 18th July 2017 denying any wrongdoing in execution of the confirmed grant. However, this application was compromised on 7th November 2017 when a consent was entered in the following terms:

(a) That within 90 days from the date of the consent order, the respondents to transfer title No. LR Loc.4/Ngararia/[...] measuring 0.5 acres to the following beneficiaries:

(i) SKM

(ii) NW

(iii) GN

(iv) MNM DTM

(v) JN in equal share

(b) 90 Shares in Mwireri estate to be transferred to the above beneficiaries in equal share.

7. As a result of the said consent, the matter was fixed for mention on 8th February 2018 to confirm compliance.

8. Before compliance could be confirmed, Michael Njoroge Mihang'o filed summons for annulment or revocation of title. The application which is the subject of this ruling is dated 27th June 2018 and filed the same day seeking orders as follows:

(1) Spent.

(2) Spent.

(3) Spent.

(4) That the transfer of land parcel No. Loc 4/Ngararia/[...] to the 2nd respondent be annulled and or revoked.

(5) That parcel No. Loc.4/Ngararia/[...] be equally transferred to the beneficiaries of the estate of Jackson Mihang'o Njuguna namely:

(i) SKM

(ii) MWM

(iii) GNM

(iv) MNM

(v) JNM

(6) That the 3rd respondent be ordered to effect the changes sought in prayers 4 and 5 herein above.

(7) That the 4th respondent to equally transfer all shares and dividends in Mwireri Estate Ltd belonging to the deceased to his beneficiaries above listed.

9. The application is supported by an affidavit sworn on 27th June 2018 by Michael Njoroge Mihang'o the applicant herein. According to the applicant, plot Loc.4/Ngararia/[...] was to be divided into equal share measuring 0.25 acres. One portion was to be given to James Mburu Njuguna the 1st respondent herein and the other portion to be held by the petitioners in trust for the children of the deceased.

10. It is the applicant's contention that, after sub-dividing the plot into two plots No. Loc.4/Ngararia/[...] and [...], the petitioner (1st respondent) transferred his portion No. Loc.4/Ngararia/[...] as well as No. [...] meant to be the share of the applicant and siblings to the 2nd respondent as well. It is this portion/title Loc.4/Ngararia/[...] that the applicant is claiming should be cancelled by the Land Registrar (3rd respondent) and have the same transferred to him and his siblings equally.

11. The applicant prayed for an order directing the 4th defendant to transfer Mwireri Estate Ltd 90 shares in their company.

12. Despite service of the application, the respondents did not file any response to the application. On 25th September 2018, the matter proceeded ex parte as there was no appearance on the respondents' part. Mr. Kamau for the applicant basically adopted the affidavit in support of the application in his oral submissions.

13. I have considered the application herein and affidavit in support. There is no dispute that the grant in this case was confirmed on 16th June 1995 and the estate shared out. Nobody is complaining on the mode of distribution. The only issue in contention is whether the administrators have administered and executed the confirmed grant as ordered. If the consent entered on 7th November 2017 is anything to go by, the applicant and his siblings have not benefited from their father's estate. The consent order is still valid.

14. There is no evidence that the 1st respondent has complied with the consent order which is basically the same order the current application is seeking. Since plot No. Loc.4/Ngararia/[...] has been sub-divided with the 1st respondent taking his share (Loc.4/Ngararia/[...]), the other share (Loc.4/Ngararia/[...]) should be transferred to the applicant and his siblings as per the certificate of confirmation.

15. It is clear from the searches attached and marked MNM2 and MNM3 that the original land Loc.4/Ngararia/[...] has been sub-divided into 2 portions namely Loc.4/Ngararia/[...] and [...] all of which are currently registered in the name of a 3rd party. Plot No. [...] is registered in the name of Peter Guchu Karanja and Esther Wanyamwa Kimani while [...] is in the name of Peter Guchu Karanu.

16. Obviously, the applicant and his siblings have been shortchanged. The property was not transferred as per the grant. The 1st respondent

has not given any explanation to justify his illegal activities.

17. I am concerned that the applicants have not benefited from their father's estate to which they are rightfully entitled. The 1st respondent became the administrator of the estate just because the applicant and his siblings were minors then. He must be made to account for his activities as a trustee. The act of the administrator in disinherit the applicant's their fathers' estate is a high degree of dishonesty and breach fiduciary duty.

18. I am satisfied that the application is merited and the same is allowed with orders as follows:

(a) That the transfer and issuance of title in respect of land parcel Loc.4/Ngararia/[...] to Peter Guchu Karanja was illegally done and the same is hereby cancelled.

(b) That the Land Registrar Murang'a lands office is directed to effect the said cancellation and have the land revert back to its original position.

(c) That the petitioners/administrators to transfer 90 shares in Mwireri Estate and the said land Loc.4/Ngararia/[...] to the applicant and his siblings as per the consent order dated 7th November 2017.

(d) That in default of the petitioners to act, the applicant shall be at liberty now that he and his siblings are of age to seek leave of the court to substitute the current petitioner/administrator as administrator for purposes of completing the administration of the estate.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER, 2018.

J.N. ONYIEGO

JUDGE