



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO. 64 OF 2002

IN THE MATTER OF THE ESTATE OF MUSA MANGUNYI NAMWONZA.....DECEASED

AND

VINCENT HAINZA MUKUDI.....RESPONDENT/PETITIONER

VERSUS

BENSON MUKUDI MANGUNYI.....APPLICANT/OBJECTOR

RULING

(Chamber Summons application dated 19th February 2015)

1. Through the summon for revocation or annulment of grant dated 19th February, 2015, the Applicant Benson Mukudi Mang'unyi seeks orders as follows:

“1) That the Grant of Letters of Administration issued to VINCENT HAINZA MUKUDI on the 6th June 2003 be revoked, or annulled and all subsequent acts or deeds be set aside.

2) That the costs of this application be provided for.”

2. Vincent Hainza Mukudi, the administrator of the estate of the deceased Musa Mangunyi Namwonza is the Respondent in regard to the instant application.

3. The Applicant's case is that the Respondent obtained the grant fraudulently by amending the court documents and replacing his name (the Applicant's) as the lawful petitioner with his name (the Respondent's). He also avers that the Respondent is not a beneficiary of the estate of the deceased Musa Mang'unyi Namwonza.

4. In an affidavit he swore in support of the application on 19th February, 2015, the Applicant avers that the deceased, who died on 16th June, 1986, was his father. The deceased was the registered owner of L.R. No. Bunyala/Mudembi/1663. It is the Applicant's averment that in 2008 he applied for grant of letters of administration to the estate of the deceased and upon making an official search at the Lands Registry, he discovered that the Respondent/Petitioner had substituted him as the administrator of the estate of the deceased. The Applicant avers that the Respondent who is but a distant relative had proceeded to have the parcel of land registered in the name of his son Chrispinus Sumba Mukudi.

5. The Respondent opposed the application by swearing the replying affidavit dated 11th November, 2015. His case is that L.R. No. Bunyala/Mudembi/1663 was indeed registered in the name of the deceased. He also admits that he is not the biological son of the deceased. It is his averment that the deceased held the parcel of land in question as a trustee as the same belonged to his late father Mukudi Namwonza who died on 26th June, 1969 before land adjudication was done.

6. The Respondent avers that upon the death of his father, the deceased who was a step brother to his father inherited his step mother the late Agnes Nanjira. It is the Respondent's case that during the land adjudication period, the deceased without the knowledge or consent of his mother or stepmother had the parcel of land registered in his name. When Agnes Nanjira discovered what the deceased had done she ended the relationship thus forcing the deceased to return to his homestead at Rugunza village.

7. The Respondent deposes that the deceased and his late brother Pascal Ogula Namwonza later visited him and told him that he was entitled to the land being the only son of his late father. The deceased also informed him that he registered the parcel of land in his name as he feared that Agnes Nanjira would dispose of the same if it was registered in her name. It is the Respondent's case that before the deceased passed away they visited the lands offices at Busia and Siaya with a view to having the parcel of land transferred to him only to be told that the records for the land were still in Nairobi.

8. The Respondent avers that upon the deceased's death the Applicant secretly petitioned to administer the deceased's estate and upon discovering this, he asked his advocate Mr. Balongo to file an objection. The Applicant and his brother failed to turn up in court and the court ordered him to substitute the Applicant as Petitioner.

9. The Respondent avers that according to the Abanyala customary law, an inheritor like the deceased had no right to inherit the property of the person whose wife he had inherited. It is the Applicant's case therefore that the deceased could only be registered as a trustee and not the absolute owner of the land in question.

10. This matter proceeded through oral evidence and the Applicant testified in support of his case. He called Namwonza Khamala Onyango as his witness. The Respondent testified in opposition to the application for revocation of grant. He did not call any witness.

11. The Applicant told the court that he is the one who filed these succession proceedings but he could not proceed as he did not have the money that was required. Subsequently his name was, without his knowledge, deleted and the Respondent named as the Petitioner. The grant was confirmed and the land in question transferred from the name of the deceased to that of the son of the Respondent. The Applicant's evidence is that the deceased was his father and the Respondent is a distant relative. The Applicant told the court that the land in question could not have been registered in the name of the deceased as a trustee as the Respondent was already an adult working at the Lands Office at Siaya during demarcation and the land ought to have been registered in his name.

12. The evidence of the Applicant was supported by that of his witness who told the court that the father of the Respondent had several wives one of them being Agnes Nanjira. Upon the demise of the Respondent's father his wives were inherited by different men. The deceased inherited Agnes Nanjira. According to the Applicant's witness, Agnes Nanjira had no son and her parcel of land was registered in the name of the inheritor as per customs.

13. The Respondent in his evidence reiterated the contents of his affidavit.

14. The facts in this matter are not disputed. The Respondent is the son of the late Mukudi Namwonza. Agnes Nanjira was one of the several wives of Mukudi Namwonza. Agnes Nanjira was therefore a step-mother to the Respondent. She was inherited by Musa Mang'unyi Namwonza, the deceased herein. The Applicant herein was the son of the deceased Musa Mang'unyi Namwonza. Through the relationship between the deceased and Agnes Nanjira, Agnes Nanjira can be said to be step-mother of the Applicant.

15. The undisputed evidence also shows that L.R. No. Bunyala/Mudembi/1663 was registered in the name of the deceased herein. At the moment that parcel of land is registered in the name of Chrispinus Sumba Mukudi, the son of the Respondent. A restriction was placed in respect of any transactions on that land on 6th May, 2015.

16. The Respondent claims that the parcel of land in question was registered in the name of the deceased as a trustee. I cannot go into the question of trusteeship in this matter as that is an issue for determination before a different forum. What has clearly emerged is that the deceased who is the father of the Applicant was the registered owner of the land in question. The Respondent had no relationship with the deceased.

17. Between the Applicant and the Respondent, the person who was entitled to apply for letters of administration in respect to the estate of the deceased was the Applicant. There are also questions as to how the name of the Applicant as Petitioner in this matter was deleted and replaced with that of the Respondent who is now the administrator of the estate of the deceased. That is also another strong ground for granting the Applicant's prayer.

18. In short the application herein has merit. The same is allowed as prayed. The Applicant will have the costs of the application from the Respondent.

Dated, signed and delivered at Busia this 16th day of February, 2017

W.KORIR,

JUDGE OF THE HIGH COURT