



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2785 OF 1998

IN THE MATTER OF THE ESTATE OF JAMES NJENGA NJUGUNA (DECEASED)

RULING

1. On 30th October 2013, the parties hereto entered into a consent to the summons for confirmation of grant so that Karai/Gikambura/937 was disposed of equally between the two widows of the deceased to hold in trust for their children. The widows were unable to agree on the disposal of Karai/Gikambura/T510, and it was agreed that the issue of the distribution of that property be canvassed before the court. The parties thereafter filed submissions on that point.
2. Before the court could address its mind to the issue two applications were lodged in the matter by parties who were making claims to the property. One was by Monica Wamuhu Mbugua. She swore a detailed affidavit stating that the property, Karai/Gikambura/T510, actually belonged to her late husband although registered in the name of the deceased. There is also an application for revocation of grant dated 16th April 2015 by parties who were apparently unhappy with the orders recorded by consent on 30th October 2013. The applicants are sisters of the deceased and they claim that both Karai/Gikambura/937 and Karai/Gikambura/T510 were assets that the deceased held in trust for the family.
3. The issue of Karai/Gikambura/937 has already been disposed of and any party aggrieved of the orders made on 30th October 2013 is at liberty to appeal against the same.
4. Regarding Karai/Gikambura/T510, I note that there are several parties claiming that this was trust property held by the deceased for the benefit of others. That would call upon me to make a determination as to ownership thereof. It would require that I determine whether the actual or real owner thereof was not the deceased but another.
5. According to Article 162(2) of the Constitution the Environment and Land Court (ELC) is vested with jurisdiction to determine disputes touching on ownership and the right to occupy and use land. Article 165(5) of the Constitution states that the High Court has no jurisdiction over matters that are the subject of Article 162(2) of the Constitution. It is my considered view that the matter of Karai/Gikambura/T510 falls within the purview of Article 162(2) of the Constitution, meaning that this court, by virtue of Article 165(5), does not have any jurisdiction over it.
6. Determination of the question of the ownership of Karai/Gikambura/T510 as between the deceased and the other claimants should be referred to the ELC for resolution thereof.
7. Under Rule 41(3) (4) of the Probate and Administration Rules, during the hearing of a confirmation application, like in the present case, where an issue arises as to the identity or share or estate of any person claiming to be beneficially interested in it, the court may set aside the distribution of that share or property to await determination of the matter elsewhere.

8. The final orders that I shall make in the circumstances are as follows:-

(a) That I dismiss the application dated 16th March 2015 to the extent that it applies to Karai/Gikambura/937;

(b) That I set aside Karai/Gikambura/T510 from the schedule of the assets for distribution in the estate of the deceased to await determination of the ownership thereof between the estate of the deceased and all those other claimants;

(c) That Monicah Wamuhu Mbugua and the applicants in the application dated 16th March 2015 are granted 366 days to file and prosecute a suit at the ELC to resolve the questions the subject of (b) above;

(d) That the administrators of the estate shall be at liberty thereafter to move the court to make a determination on the distribution of Karai/Gikambura/T510; and

(e) That the estate comprises of assets wholly situated within Kiambu County consequently the cause shall be transferred to the High Court of Kenya at Kiambu for disposal.

DATED and SIGNED at NAIROBI this 3RD DAY OF MAY, 2017.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 5TH DAY OF MAY, 2017.

M. MUIGAI

JUDGE