



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC SUCCESSION CAUSE NO. 38 OF 2016

P. MBOGO KARANJA.....1ST APPLICANT

SIMON N. KIRUGARA.....2ND APPLICANT

NJURA NJERU.....3RD APPLICANT

VERSUS

JOSEPH KARIUKI NJOKA.....RESPONDENT

RULING

1. This is a ruling on a notice of motion dated 14/10/2016 seeking for orders that this Succession Cause No. 91 of 2007 be consolidated with Succession Cause No. 770 of 2002.
2. The application was supported by the affidavit of the counsel for the applicant Mr. Samuel Kirimi Guantai. He depones that the two succession matters are related in that they touch on twin properties of the same parties and that the beneficiaries in the two causes are essentially the same. It is stated that for furtherance of just, fair and equitable determination of both causes, it is in the interest of justice that they be consolidated.
3. The applicant further claims that both estates devolve from the same person and that it would have adverse effect on all the parties if the causes were to be decided separately. It was during land demarcation in the 1960s that the land of the deceased Gitana Nyaga in Succession Cause No. 91 of 2007 was given to his son Kamau Gitana, the deceased in Succession Cause No. 770 of 2002.
4. The application was opposed by the respondents relying on the affidavit of Florence Waruguru, the 1st respondent. She states that she has the authority of the 2nd respondent Lilian Wambui to plead on her behalf.
5. It is stated that the application is unmerited for the orders sought cannot be issued since the two causes are separate for separate deceased persons. The respondents argue that if there was a clerical error as claimed it ought to have been pursued with the right authorities for correction.
6. The respondents were represented by Mr. Victor Andande while Mr. Guantai represented the applicant who argued the application orally before the court.
7. The deceased in Succession Cause No.91 of 2007 Gitana Nyaga died in 1969. His son Nyaga Gitana was appointed administrator of the estate on 10/02/2012. The beneficiaries are named as the widow and

children of the deceased. In their deceased father's estate, two late sons of Gitana Nyaga are represented by their widows who are the respondents in this application and are the protesters in the cause.

8. Kamau Gitana the deceased in Succession Cause No.770 of 2002 died on 28/08/1969 and was survived by two widows, children and grandchildren. The widows are the co-administrators in the estate and were so appointed on 15/06/2000 in Embu Principal Magistrate Succession No. 222 of 1999. The file was later transferred to the High Court and given No. 770 of 2002.

9. It is important to note that both causes are at an advanced stage for they are pending confirmation of grant. The issue of the estates being related and the clerical error having occurred during land demarcation is being raised for the first time despite the fact that the causes were filed more than ten years ago. The beneficiaries in Succession Cause No. 91 of 2007 are the children and widows of the sons of the deceased who are all recognized by the law. In Succession Cause No. 770 of 2002, the beneficiaries are the widows, children and the grandchildren of the deceased.

10. The Law of Succession Act defines the word "estate" as the free property of the deceased. The word "administrator" means a person to whom a grant of letters of administration have been made under this Act. The beneficiaries and the administrators in the two causes are different and belong to different generations. It would be against fair, just and equitable determination of the causes to lump up the beneficiaries in one (consolidated) cause.

11. The deceased's asset in Succession Cause No. 91 of 2007 is L.R. Ngariama/Merichi/80 measuring 9.20 acres while the asset in Succession Cause No. 770 of 2002 is L.R. Ngariama/Merichi/81 measuring 10.20 acres. The titles are absolute and are not related irrespective of whether the parcels maybe adjacent to each other. It would be inappropriate to refer to the properties as twin properties as claimed by the applicant. None of the titles has been challenged in a competent court of law and no adverse order has been made regarding ownership. The properties are therefore independent of each other and must be treated as such.

12. The Law of Succession Act provides for different rights of inheritance for widows, children and grandchildren. It would not result to fair administration of justice to combine the beneficiaries in the two separate estates involving different deceased persons and independent properties together. The administrators in both estates are different and were appointed in different capacities.

13. The Law of Succession caters for diverse interests including creditors, debtors and purchasers who are likely to come in at any stage of the proceedings. The consolidation of the estates may further complicate the cause in regard to interests of such parties.

14. I have perused the copies of registers for the two parcels and noted that there is only one entry in each of the documents showing that each of the proprietors was registered on 7/10/1957 in the names of the respective deceased person. This is about sixty years ago and the deceased persons never complained about any error during their lifetime. Assuming that there was such an error which the beneficiaries would want to pursue, the right thing to do was to approach a court of competent jurisdiction to resolve the issue before distribution of the estate is done.

15. The applicant has not presented any evidence to the court to demonstrate that there were any errors that occurred as alleged. There was no affidavit from any clan member who took part in land adjudication to support the applicant's claim.

16. It is my finding that the beneficiaries in the two causes are not essentially the same as claimed and that the properties in each of the estate are different and ought to be handled separately.

17. I find no merit in this application and it is hereby dismissed.

DELIVERED, DATED AND SIGNED AT EMBU THIS 3RD DAY OF MAY, 2017.

F. MUCHEMI

J U D G E

In the presence of:-

- 1. Mr. Guantai for Petitioner/Applicant**
- 2. Mr. Mugambi for Andande for Respondents**