



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA AT MERU
SUCCESSION CAUSE NO. 116 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE NELI MUKUBU SABRON – DECEASED

FRANCIS MUNYUA M'MATHAEPETITIONER

VS

JOHN GITARIAPPLICANT/OBJECTOR

RULING

This cause relates to intestate estate of the late Neli Mukubu Sabron who died on 7th November 2003 domiciled at Kaaga Municipality aged 83 years old. Her intestate estate is comprised of parcel land. L.R. No Ntima/Igoki/349 measuring 0.16 Ha for which Francis Munyua M'Mathae took out Letter of Administration on 20th June 2006. Upon grant being made the Administrator who indicated the deceased was survived by himself, Caroline Mwari Lubia and Naftali Murithi Zablon Mathae entered into agreement for sale of their portions of parcel No. Ntima/Igoki/349. The agreement shows vendors as Francis Munyua M'Mathae, Naftali Murithi Zablon Mathae and Caroline Mwari Lubia. The agreement is dated 11th July 2006. Application for confirmation was filed on 27th March 2007 and allowed on 15th February 2007 and also on 26th April 2007. One devolving parcel No. Ntima/Igoki/349 to Gitonga Wangombe Kariuki and Margaret Wanjiku Ndungu.

On 25th September 2007 John Gitari filed an application under Certificate of Urgency seeking that Letters of Administration to the intestate estate of the Late Neli Mukubu Sabron made to Francis Munyua on 12th June 2006 and confirmed on 27th March 2007 be revoked and/ or annulled and that an order of inhibition do issue prohibiting dealings on parcel No. Ntima/Igoki/349, until the succession cause is heard and determined.

The application was supported by grounds on face of application and affidavit of Edward Gitonga Muthamia and John Gitari. Among the grounds supporting application are that Letters of Administration were granted by fraudulently misleading the court and that, Administrator didn't disclose correct identity of all dependants of the deceased.

That material facts were concealed by the Administrator. That the Administrator/petitioner intended to transfer L.R. No. Ntima/Igoki/349 to third parties thereby disinheriting other dependants.

That L.R. No. Ntima/Igoki/349 had been devised to the applicants father one James Muthamia by the deceased prior to her death but died before transferring same to James Muthamia who is now deceased. In the affidavit of John Gitari paragraph 6 he gave correct identities of the dependants of the deceased as per Chiefs letter dated 27th August 2007 as:-

1. John Gitari
2. James Muthamia (Deceased)
3. Gilbert Kamundi
4. Francis Munyua
5. Naftali Murithi
6. Caroline Mwari
7. Florence Muko Munene (Deceased)

He said parcel No. L.R. Ntima/Igoki/349 was devised to his late brother James Muthama and the father to Edward Gitonga Muthama. He urged the court to revoke grant made to Francis Munyua as it was obtained secretly and fraudulently without informing and involving all the dependants of the deceased.

Edward Gitonga Muthamia also swore supporting affidavit. He said the petitioner had sold suit property to Gitonga Wang'ombe Kariuki and Margaret Wanjiku Ndungu without authority. He said the title to the land subject of this cause was in his possession and the Administrator was aware of it and even made it known to Land Registrar Meru who asked him to surrender it but he declined to surrender it for cancellation.

That when the Administrator reported that title deed was lost, Edwards Advocate wrote to Land Registrar explaining the whereabouts of the title but the Administrator went ahead and caused gazettment of the loss. That conduct by the Administrator made it clear that he was going to stop at nothing to sell this parcel of land fraudulently.

Edward Gitonga said all his uncles and aunts knew and are in agreement that the subject land was devised to his late father by his paternal grandmother who however died before transferring the land to his late father.

Submissions were filed by the Applicants' Counsel and Interested parties Counsel as agreed on 16th January 2007 that application for revocation be disposed of on the basis of affidavit evidence filed and written submissions.

In consideration of the application supporting affidavits, Replying Affidavits, supplementary affidavits and further affidavits the issue for determination is whether the applicants herein have satisfied the court that the grant made to Francis Munyua M'Mathare should be revoked.

Francis Munyua M'Mathae obtained Letter of Administration to the estate of the deceased Neli Mukubu Sabron on the basis of a letter dated 4th April 2006 which indicated the surviving legal dependants of the deceased were:-

1. Francis Munyua
2. Caroline Mwari
3. Naftali Murithi Zablon

The letter is written by Chief Ntima Location Mr Silas Kiriarki. When application for revocation was filed the applicants filed another list of deceased person's beneficiaries/dependants as:-

1. John Gitari

2. James Muthama –Deceased
3. Gilbert Kamundi
4. Francis Munyua
5. Naftali Murithi
6. Caroline Mwari
7. Florence Mukomunene (Deceased)

In his replying affidavit to the application for revocation Francis Munyua on 15th October 2007 discloses that actually the deceased had even more children than the ones listed by the Assistant Chief of Kaaga Sub location in letter dated 27th August 2007. He gives a list of 9 children, three of whom are deceased including Edward Gitonga's father .

He also annexed an order in succession cause no. 7 of 1989 in which the estate of Zablon M'Mathare alias Zablon Ngakomanga Mwararia was distributed – FMM2. He also annexed in Succession No. 7 of 1989 in which parcel No. Muthambi/63 was shared equally between John Gitari, James Muthama and Francis Munyua. In annexure FMM3 the family of Zablon M'Mathare on 23rd October 1997 wrote to Chairman Land Control Board in respect to L.R.No. Ntima/Igoki/349 objecting to any transactions being carried out on parcel of land in question by James Muthamia (now deceased) whom they suspected was manipulating their 90 year old mother to transfer land to him. The letter was signed by John Gitari, Rosemary Karuga, Gilbert Kamundi, Naftally Murithi, Francis Munyua and Caroline Mwari.

That was a letter following one that was earlier on handwritten by Francis Munyua over the same issue and signed by Francis, Naftally and Caroline Mwari dated 14th September 1993. The 2 letters don't indicate if the deceased had any intention of bequeathing the subject land either to Caroline Mwari or to the late James Muthamia but it is apparent that the children of Neli Mukubu Sabron were looking forward to her death so they could inherit her land.

That is the only explanation that can be construed from the squabbles over the parcel of land. When the deceased died in 2003, it followed that she died intestate having said nothing concerning how she wished her estate to be dealt with. It was therefore incumbent upon Francis Munyua M'Mathae to identify, list and disclose the names of all beneficiaries and possible dependants which he didn't do despite the fact that there was long standing dispute over the land in question long before the deceased died.

He failed to disclose material facts upon which the court applying its mind reasonably would have arrived at a just and fair conclusion of the matter.

There is nothing in affidavit sworn by Caroline on 15th October to show the deceased died while in the cause of transferring the land to her, neither is there evidence that the deceased wanted to transfer land to James Muthamia (Deceased) except for the letters written to Land Control Board to caution them not to give consent for transfer of land to James Muthamia from their mother the intestate herein. L.R. No. Ntima/Igoki/349 therefore remains intestate. If we are to go by the submissions that the late James Muthamia already got land through distribution of the estate in succession cause No. 7 of 1989, then there is evidence that Francis Munyua also benefitted from that cause by sharing 1/3 of parcel No. 63 with John Gitari and James Muthama.

When Francis Munyua M'Mathae, Naftali Murithi and Caroline Mwari purported to sell parcel of land No. Ntima/Igoki/349 on 11th July 2006 the grant made to Francis Munyua on 20th June 2006 had not been confirmed. The subject land was still registered in the name of the deceased and therefore the 3 sold what they didn't have. They didn't have power and/or authority to dispose of the suit land and were therefore intermeddling with the estate property.

When confirmation was finally done the applicant's herein didn't sign consent to confirmation or even distribution. They learnt of the succession cause when Francis Munyua informed the Land Registrar that Edward Muthama was in possession of title deed and the Land Registrar wrote requiring him to surrender the title for cancellation. Even when a letter was written by the advocate cautioning the Registrar not to gazette title as lost, still gazette was done.

Margaret Wanjiku Ndugu in her affidavit sworn on 25th day of March 2015 said that she and her husband the 2nd interested party bought land from Francis Munyua, Naftali Murithi Zablon and Caroline Mwari Lubia who advised that all the beneficiaries were aware of the said sale and that they were to share proceeds of sale. She said they took possession of the suit land and had paid over KShs. 1,000,000 on diverse dates. She says that same beneficiaries have had a change of heart and want to sell same land to other persons at their detriment

It is unfortunate that the interested parties paid so much money for land that was in the deceased person's name without confirming that those selling were the only beneficiaries. Francis Munyua was only an Administrator and had duty both to court and to all beneficiaries and dependants of the intestate estate to ensure transparent dealing with the estate. He didn't have authority to sell. He concealed the full list and identity of the beneficiaries /dependants to the intestate estate.

Francis Munyua had no authority to sell and this court's jurisdiction in a succession cause is not to transfer land to purchasers of estate land but to ensure that beneficiaries and/or dependants are equitably provided for. I do therefore find that the applicants have satisfied the grounds for revocation of grant and therefore grant made to Francis Munyua M'Mathae and confirmed on 26th April 2007 having been obtained fraudulently and by concealment of material facts is hereby revoked and/or annulled as void ab initio.

The interested parties Gitonga Wang'ombe Kariuki and Margaret Wanjiku Ndungu have recourse to the 3 people to whom they paid consideration for purchase of parcel No. Ntima/Igoki/349.

Costs of the application to the applicants to be paid by Francis Munyua.

Ruling Signed, Delivered and Dated this 15th Day of June 2017.

HON. A. ONG'INJO

JUDGE

In the presence of:

C/A: Penina

Mr Kaumba Advocate for Objector – N/A

MS Mwangi for Petitioner – N/A –Clerk Present Gilbert.

MS Kathuta Advocate for Ntaragwi for Interested Parties.

HON. A. ONG'INJO

JUDGE