



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 586 OF 2014

IN THE MATTER OF THE ESTATE OF WILLIAM MOSETI & MARWA MWITA
(DECEASED)

-BETWEEN-

- 1. ZABLON MARWA MWITAAPPLICANT/BENEFICIARY
- 2. SAMWEL KERIOBA MOSETI..... APPLICANT/BENEFICIARY
- 3. DAVID RIOBA MWITAAPPLICANT/ADMINISTRATOR
- 4. SIMON MWITA MOSETI..... APPLICANT/ADMINISTRATOR

-AND-

RIOBA MWITA KEGOKORA.....RESPONDENT/OBJECTOR

JUDGMENT

1. The deceased persons in this cause, **WILLIAM MOSETI** and **MARWA MWITA** (hereinafter referred to as ***'the first deceased'*** and ***'the second deceased'*** respectively) were blood-brothers to the Objector/Defendant herein, **RIOBA MWITA KEGOKORA**. The said brothers were blessed with families and lived harmoniously on distinct portions on the parcel of land known as **BUKIRA/BWISABOKA/172** (hereinafter referred to as ***'the land'***).

2. The first deceased died on 21/11/1997 whereas the second deceased died on 28/07/1983. They both left behind their respective families on their portions of the land.

3. Since the land was registered in the names of the first and second deceased, it was agreed that the administration of the estates of the deceased be done by a representative from each of their houses. **DAVID RIOBA MWITA** was the representative from the house of the second deceased and **SIMON MWITA MOSETI** was the representative from the house of the first deceased. The two petitioned for and they were granted the administration of the estates of the deceased on 15/06/2015. The Respondent/Objector was named as a beneficiary.

4. It seems that the Respondent/Objector was not at peace with that development and by a Summons for Revocation dated 18/08/2015 and evenly filed in Court through Messrs. Richard Miencha & Associates, he applied for the revocation of the grant principally because he was not involved in the process leading to the issuance of the grant. With a view to dispose of this cause without further ado, a consent was entered on 21/09/2015 where the initial grant was revoked and a fresh grant issued in the names of the two initial Petitioners and the Respondent/Objector. Directions were given on the filing of the

confirmation application by all or any of the new administrators. The Respondent/Objector then filed the Summons for Confirmation dated 26/10/2015 on the very day. The Applicants herein also filed an application on the same day. However, that application is the Summons for Revocation/Review of the Grant dated 23/10/2015 seeking the removal of the name of the Respondent/Objector from the administration of the estate of the deceased.

5. Further directions were given and the two summonses were heard together by way of oral evidence. The third and fourth applicants herein who were also joint administrators with the Respondent/Objector were deemed as the first and second Plaintiffs whereas the Respondent/Objector was deemed as the Defendant.

6. The Plaintiffs presented their case and called witnesses. **SIMON MWITA MOSETI** (hereinafter referred to as '***the Plaintiff***') testified that he is one of the beneficiaries to the estates of the deceased and vehemently opposed the inclusion of the Respondent/Objector as an administrator. He contended that he erroneously conceded to the application by the Respondent/Objector to be a co-administrator as he had not understood its essence. On a clear understanding, he opted to file the revocation application. He termed the Respondent/Objector as a busy-body in the matter since he never challenged the ownership of the land since its registration in in 1971.

7. On cross-examination, the Plaintiff admitted that indeed the Respondent/Objector was a brother to his father and that all the three brothers lived well on the land within separate portions together with their families. He reiterated that each of the three portions on the land have distinct boundaries well known to all family members. He wondered why the Respondent/Objector was not registered as a co-owner and did nothing for all that time. The Plaintiff however was very clear that the Respondent/Objector was entitled to a title deed in respect to the portion he occupies on the land and that had he co-operated with the other family members the matter would not be in Court.

8. SAMWEL KERIOBA MOSETI (PW2) testified to the effect that the families of the deceased and the Respondent/Objector held meetings on the issue of the succession of the estate of the deceased and that the Respondent/Objector and his son fully took part. He informed the Court that the Respondent/Objector's son was even appointed as a Treasurer to collect money towards the cause but fled with it on collection. It took the intervention of the Area Chief for him to refund the money and since then the Respondent/Objector reverted to filing applications instead of dealing with the matter at the family level. It was his evidence that one of the recommendations reached at by the families was that since the Respondent/Objector had not been registered as a co-owner on the land, he was to be treated as a beneficiary and get what he lawfully occupies. To him, the interest of the Respondent/Objector was fully secured and as well wondered why he had to file an application and allege falsehoods on the part of the other family members.

9. ZABLON MAROA MWITA (PW3) reiterated the testimony of the Plaintiff and PW2. He was equally perturbed by the unexplained conduct of the Respondent/Objector in turning around what the family had decided. He re-affirmed the position that no one is out to take away the portion of land in occupation by the Respondent/Objector and his family.

10. The Plaintiffs rested their case and the Respondent/Objector (hereinafter referred to as '***the Defendant***') tendered his defence without calling any witness. He prayed for a title deed in respect of the portion of the land he is occupying.

11. This Court visited the land and saw the district portions on the land occupied by the families of the deceased and the Respondent/Objector. They were clearly demarcated by sisal plants. Parties then filed written submissions at the close of both cases.

12. I have carefully considered the summonses, the evidence, the submissions as well as the annexures to the summonses. I also closely watched the witnesses as they testified before me.

13. In this matter, I fully agree with the Plaintiffs that none of the family members of the deceased is out

to evict the Defendant from the land or to deny him the portion he occupies with his family. That was so stated before me by all the witnesses and was repeated when this Court visited the land. I however noted that the only problem is the Defendant. Why do I say so? The family had meetings which the Defendant and his son were party to. The son was appointed as the family treasurer and entrusted with funds towards pursuing this cause. He collected the money and fled. Family members then involved the Area Chief towards the refund. When the money was recovered, the Defendant, who now remains the eldest person in the family did not take any corrective measures on what his son had done to the family. Instead of making right what the son had erred, the Defendant decided to take the rest of the family members by the horns. He rushed to Court and pursued the matter the way he thought best.

14. All the witnesses who testified talked well of the Defendant. I noted the respect accorded to him especially by PW2 and PW3. They referred to the Defendant as their father with all due respect. The Defendant is clearly the one to blame for this unnecessary and protracted matter which could have been easily settled at the family level. Had he handled the matter as expected of him, indeed the parties might have only appeared before Court for the confirmation of the grant. There was no scheme against him or at all; either as alleged or otherwise. No one stand interested in the portion of the land he occupies. The Defendant and his family is clearly the troublemaker in this matter. Given the position he holds in the family, the Defendant is obliged to take that position more seriously and steer the family well. I so say because the Kuria community has high respect for elders and those in authority in general. I am therefore satisfied that the Defendant misrepresented the true factual position in this matter and I agree that had the Plaintiffs read the application well in advance and in view of the background of the matter, they would not have conceded to the same. That consent was hence largely entered by mistake.

15. The family having discussed the succession issue realized that the Defendant ought to have been a co-owner on the land and that ought to have been done during the life of the deceased persons. It is also clear that the Defendant was not a dependant to any of the deceased persons herein under **Section 29 of the Law of Succession Act**, Chapter 160 of the Laws of Kenya *(the Act)*. Even in terms of inheriting from the deceased persons, the Defendant would rank much lower from the children and spouses of the deceased persons in terms of consanguinity (**See Section 66** of the Act). However, in good faith, the family rightly-so named the Defendant as a beneficiary. That being so, there was no cause for alarm and infact there was no need for the Defendant to file the revocation application in the first place. If the Defendant still felt insecure even on being named as a beneficiary, he ought to have filed a protest instead but not seek to revoke the grant. There was no valid reason at all to seek for the revocation of the grant in the circumstances of this case in the first instance.

16. It is my sincere hope that the rest of this matter will end well. I have no doubt that the Plaintiffs are committed to making good their position that every family do secure its distinct title deed over the portion of the land it occupies. I urge the Plaintiffs to continue extending that tremendous respect to the Defendant as I equally expect the Defendant to likewise do so.

17. Having said so and in a bid to aid in the early determination of this matter and to avoid the possibility of any further unnecessary antagonism between the parties herein, the following orders do issue: -

a) The Summons for Revocation/Review of Grant dated 23/10/2015 be and is hereby allowed and that RIOBA MWITA KEGOKORA is hereby removed as an administrator of the estate of the deceased herein. For avoidance of doubt, the administrators shall henceforth be SIMON MWITA MOSETI and DAVID KERIOBA MARWA.

b) The subsequent Grant is hereby confirmed and the parcel of land known as BUKIRA/BWISABOKA/172 shall be sub-divided into three portions in line with the sisal boundaries on the ground. To that end, the Migori County Land Surveyor shall undertake the sub-division and the Migori County Land Registrar shall issue three separate title deeds as under: -

i) The portion that was occupied by MARWA MWITA shall be registered in the names of DAVID KERIOBA MARWA and ZABLON MARWA MWITA on their behalf and

in trust of all the children and spouse(s), if any, of the said MARWA MWITA.

ii) The portion that was occupied by WILLIAM MOSETI shall be registered in the names of SIMON MWITA MOSETI and SAMWEL KERIOBA MOSETI on their behalf and in trust of all the children and spouse(s), if any, of the said WILLIAM MOSETI.

iii) The portion that is currently occupied by RIOBA MWITA KEGOKORA shall be registered in his name.

c) Each party shall bear its own costs of the sub-division and subsequent transfer. Had the Applicants prayed for costs of the Summons for Revocation/Review of Grant dated 23/10/2015 I would have granted the same but since they prayed that the costs be in cause, all parties to that application as well as the Summons for Confirmation dated 26/10/2015 shall bear their own costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 6th day of June 2017.

A. C. MRIMA

JUDGE