



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERUGOYA
SUCCESSION CAUSE NO. 964 OF 2013
IN THE MATTER OF THE ESTATE OF KIBAARA NJAGI (DECEASED)
AND
PETER MURIITHI KIBAARA.....PETITIONER
VERSUS
STANLEY MARINGA KIBARA.....1ST RESPONDENT/APPLICANT
CICILY WANJIRU KITHAKA.....2ND RESPONDENT

RULING

1. This ruling is in respect to summons dated 12th October, 2015 taken out by Stanley Maringa Kibara the applicant herein. The application involves the estate of the late **KIBAARA NJAGI** who died on 4th February, 1978. By the time the said application was heard by this Court, prayer a and b had been spent. The Applicant therefore canvassed for the following remaining prayers:

(c) That this hon. Court be pleased to restrain the respondent by himself or through his agents, servants and/or anybody claiming through him from trespassing or interfering with land parcels No. INOI/NDIMI/1860, 1861, 1863, 1864, 1865, 1866, 1867, 1868 and 1869 being the resultant numbers out of the original land parcel No. INOI/NDIMI/276 pending the hearing and determination of the application for revocation of grant dated 20th May, 2011.

(d) That this hon. Court be pleased to order cancellation of all resultant numbers of subdivision of land parcel No. INOI/NDIMI/276 being land parcel No. INOI/NDIMI/1860 1861, 1863, 1864, 1865, 1866, 1867, 1868 and 1869.

2. The grounds upon which the above prayers were sought are as follows:

i. That the respondent Peter Muriithi Kibaara filed Nyeri S.R.M.'s Court Succession Cause No. 166 of 1982 which later changed to Nyeri H.C. Succ Cause No. 375 of 2000 where the grant confirmed on 25th May, 1992 was revoked on 10th July, 2006 by hon. Justice (retired) Khamoni who ordered the cause to start afresh.

ii. That the respondent despite annulment of grant went ahead to subdivide the estate despite the fact that the applicant had commenced fresh succession case vide Kerugoya S.R.M. CC. No.

85/09.

iii. That the respondent is in the process of trespassing and selling the resultant titles despite the fact that he has filed a pending application for revocation of grant dated 20th May, 2011.

iv. That the respondent's action amounts to intermeddling with the estate.

v. That the applicant and other beneficiaries will suffer prejudice should the estate be disposed.

3. The application was further supported by the affidavit of the Applicant sworn on 12th October, 2015. The Applicant has given a brief summary of the history of the cause now before Court. The same has been confirmed by this Court. The deceased in this cause was called **KIBAARA NJAGI** and died on 4th February, 1978 as indicated above. The sole property comprising the estate was that property known as **INOI/NDIMI/276**. The Respondent herein petitioned for letters of administration respect to the said estate initially vide Nyeri Senior Principal Magistrate's Court Succession Cause No. 166 of 1982 which confirmed the grant on 2nd July, 1992. The file was later transferred to High Court in Nyeri and registered as Succession Cause No. 375 of 2000 and the record shows that the said grant was revoked on 10th July, 2006 by Justice (as he then was) Khamoni who further added that the cause was to begin afresh. The parties attempted to go before hon Lady Justice Mary Kasango on 27th February, 2007 with a new application but the honourable judge from the record made it clear that the earlier orders of Justice Khamoni stood and should be complied with.

4. The Applicant herein filed a fresh **Succession Cause No. Kerugoya Principal Magistrate's Court Succession Cause No. 85 of 2009** in compliance with Justice Khamoni's order who had ordered that the **Succession Cause No. 375 of 2000** be closed. The Respondent apparently despite the orders issued in **Nyeri High Court Succession Cause No. 375 of 2000** proceeded to distribute the estate on 17th August, 2010 using the revoked grant. This is despite the fact that the Applicant herein had petitioned and obtained a grant in **Kerugoya Principal Magistrate's Court Succession Cause No. 85 of 2009**. He then proceeded to apply for revocation of the grant vide the application dated 20th May, 2011 which is now pending.

5. The Applicant has asked this Court to cancel all the resultant titles that resulted from the subdivision and distribution of **INOI/NDIMI/276** in the interest of justice and have the property revert back to the deceased pending determination of Summons for Revocation of Grant dated 20th May, 2011.

6. I have considered the affidavit sworn by Cecily Wanjiru Kithaka on 14th July, 2015 and what Peter Muriithi Kibara orally told this Court in response to the application and what is apparent is that the respondents clearly acted in bad faith with full knowledge of what the High Court in Nyeri had ordered.

7. According to the 2nd Respondent the property that formed the estate comprised in **INOI/NDIMI/276** is now non existent and that Kerugoya Principal Magistrate's Court Succession Cause No. 85 of 2009 is non starter as the estate was distributed long ago as per the grant issued in **Nyeri Senior Resident Magistrate's Court Succession Cause No. 166 of 1982.**

8. The 2nd Respondent told this Court on his part that when he carried distribution of the estate to the 11 beneficiaries there was no order served on the District Lands Registrar stopping the process. He argued that he equitably distributed the estate to all the children and that some have died and others have taken loans.

9. The Respondent however, did not respond to the reasons why he proceeded on the basis of a nullified grant yet he was present in court on 10th July, 2006 when the judge revoked the grant and ordered that the cause do start afresh.

10. I have considered the application and the grounds upon which it is made. I have also considered the

oral submissions made in support of the application by learned counsel Mr. Gitonga for the Applicant. I have also considered the Respondent's response as indicated above. I have further perused through the record which though scanty on account of age is still clear on what the issues are in this cause.

11. The record shows that the grant issued vide **Nyeri Senior Resident Magistrate's Court Succession Cause No. 166 of 1982** was revoked/nullified by Justice Khamoni (now retired) vide **Nyeri High Court Succession Cause No. 375 of 2000** on 10th November, 2006. The Respondent confirmed that the grant was indeed revoked as demonstrated in his affidavit sworn on 20th May, 2011 in support of his application to revoke the grant issued in this cause. There is no doubt therefore that he proceeded to distribute the estate with full knowledge that he was using an invalid grant perhaps upon realizing that the orders issued in Nyeri High Court by Justice Khamoni had inadvertently not been registered with District Lands Registrar Kirinyaga.

12. This Court has noted the sentiments expressed by hon. Lady Justice Mary Kasango on 27th February, 2007 in the presence of the 1st Respondent herein and order issued by hon. Justice J. K. Serگون on 3rd December, 2010. The parties in this cause were ordered to begin the cause afresh and it was made clear to them that the grant had been revoked. The orders of hon. Justice Serگون went further to cancel titles although the order is not clear on which titles were being ordered cancelled because this Court was unable at the time of writing this ruling to get hold of the file in **Nyeri High Court Succession Cause No. 375 of 2000**. The 1st Respondent's affidavit sworn on 14th October, 2013 however, shows that the Respondent knew that the Court had ordered cancellation of the titles so that the land would revert back to deceased. He has also conceded that the Applicant herein filed this fresh succession cause in compliance of the court order that the cause be filed afresh for fresh determination. This is clearly an indictment to his action to purport to distribute the estate in total disregard and violation of valid court orders. The Respondent's illicit conduct of defying court orders is illegal, unacceptable and untenable. It cannot be sustained regardless of whether the impugned distribution was equitable or not. The 1st Respondent as indicated above filed an application to nullify the grant issued in this cause while knowing well that he has abused the court process with a view to circumventing the course of justice. The law shuns this and cannot be tolerated.

13. This Court finds that the distribution of the estate as indicated in the copy of the Green Card annexed as Exhibit 1 in the Applicant's affidavit sworn on 12th October, 2015 was done in breach of a valid court order. There was no valid grant on 17th August, 2010 when the same was purportedly registered. The same was void and invalid. The upshot of this is that I find merit in the application dated 12th October, 2015. The same is allowed in the following terms:

a. That subdivision of that property known as **INOI/NDIMI/276** was invalid, null and void. All the resultant parcels from subdivision as indicated on the copy of Green Card as 1860-1870 are hereby ordered revoked or cancelled. The County Lands Registrar is ordered to cancel all the said entries/titles and revert back to the original title – **INOI/NDIMI/276** in the name of the deceased pending determination of the cause and distribution of the estate.

b. The Respondents herein, their agents or anyone claiming under any of them are restrained from disposing or interfering with those parcels that are now registered as **INOI/NDIMI/1860, 1861, 1863, 1864, 1865, 1866, 1867, 1868** and **1869** pending the hearing and determination of the application for revocation of grant dated 20th May, 2011.

c. An order for status quo is issued which is to direct that each party/beneficiary shall remain in their respective portions that they have been occupying/utilizing pending the determination of this cause.

d. . The Respondents are condemned to pay costs of this application.

The Applicant is directed to speedily fix the application dated 20th November, 2011 for directions in

order to bring this old matter to an end.

Dated and delivered at Kerugoya this 9th day of March, 2016.

R. K. LIMO

JUDGE

9.3.2016

Before Hon. Justice R. Limo J.,

Court Assistant Willy Mwangi

Kahiga holding brief for Munene for Applicant present

Gitonga for 1st Respondent absent

Stanley Maringa Kibara present

COURT: The ruling signed, dated and delivered in the open court in the presence of Kahiga holding brief for Munene for applicant and in the presence of 1st Respondent.

R. K. LIMO

JUDGE

9.3.2016