



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3135 OF 2001

IN THE MATTER OF THE ESTATE OF PAUL MBUGUA KAGUCIA (DECEASED)

LUCY NJERI KAGWIMA..... APPLICANT/OBJECTOR

AND

LILLIAN WAMBUI MURIRA

PAUL MBUGUA MURIRA.....RESPONDENTS/ADMINISTRATORS

R U L I N G

1. Paul Mbugua Kagucia whose Estate is in issue died on 6th September, 1977. The daughter-in-law Lillian Wambui Murira (hereinafter referred to as the first Respondent) and his grandson Paul Mbugua Murira, successfully petitioned this court for letters of Administration intestate indicating that the deceased was survived by the following:

1. Lillian Wambui Murira - wife of the deceased's son
2. Paul Mbugua Murira - Grandson of the deceased
3. James Kagucia Mburu - son
4. Peter Mwaniki - son
5. Joseph Njoroge Mbugua (deceased)
6. Lucy Njeri Kagwima - wife of the deceased's brother

The grant of letters of Administration intestate was issued on 12th November, 2002 and confirmed vide certificate of confirmation of Grant dated 15th June, 2005.

2. On 15th July, 2009, Lucy Njeri Kagwima (hereinafter referred to as the Objector) filed summons for cancellation of the following titles:

- i. Kabete/Nyathuna/2661
- ii. Kabete/Nyathuna/2663 born out of L.R. Kabete/Nyathuna/601
- iii. Kabete/Nyathuna/2660

iv. Kabete/Nyathuna/2662

The Objector also prays that parcel No. L.R. No. Kabete/Nyathuna/601 do revert back to the name of the deceased, Paul Mbugua Kagucia.

3. The application is premised on grounds that by the time the Applicant applied for the revocation of the grant of Letters of Administration issued to Lillian Wambui Murira and Paul Mbugua Murira, she was not aware that the Administrators had already subdivided and transferred the suit premises into their names.

4. In her supporting affidavit sworn on 15th July, 2009 the Objector averred that after hearing the evidence of all the parties, Rawal, J (as she then was) delivered a ruling on the 26th June, 2008. In the ruling the Judge ordered the parcel of land L.R. No. Kabete/Nyathuna/601 to be redistributed and the Objector to be given half of the suit premises. Thereafter the Objector engaged a Surveyor, who upon conducting a search at the Lands Office, found that the Administrators had already transferred the suit premises in to their names.

5. The Objector further averred that for the order of the court to take effect, the parcel of land has to revert back to its original owner. That the orders being sought are not prejudicial to the Respondents, there being no pending appeal or stay of execution of the orders made by the court on the 26th June 2008.

6. The Objector filed a further affidavit dated 30th July 2015 in which she deposed that at the time of hearing and delivery of the ruling she was not aware that the suit premises had been subdivided and titles issued. She averred that the resurveying of the suit premises will not in any way disturb the possession and occupation of any of the beneficiaries since the court order was clear, that the property be divided into two. Further, that the land the Objector occupies is where she and her family have always lived and on the ground it is actually half of the suit premises, hence no disturbances will be caused to any person.

7. Mr. Ndirangu Kamau, learned Counsel for the Objector, submitted that the property in issue being L.R. No. Kabete/Nyathuna/601 should revert back to the name of the deceased Paul Mbugua Kagucia. That it was registered in the name of the deceased to hold in trust for the benefit of himself and the Objector's husband, which fact is not in dispute.

8. Mr. Ndirangu contended that the Objector filed the objection when she realized that the Administrators applied for letters of Administration without involving her and the share she got was less than what she was entitled to. Counsel pointed out that in her ruling dated 26th June 2008 Rawal J, (as she then was), ordered that the Objector should get a half share of the property, but by the time the Ruling was delivered the Administrators had already distributed the land, a fact they concealed from the Court. Further that the Objector's share on the ground has always been half of the suit property.

9. Mr. Ndirangu argued that it became difficult to enforce the orders of the court granted by Rawal J, when the Objector discovered that the land had already been subdivided and new titles issued, hence this application. He contended that it has never been disputed that the suit premises was registered in the name of the deceased, as a trustee for the Objector's husband, nor that the Objector is entitled to her husband's share.

10. Lillian Wambui Murira (herein after the Administrator) in her reply to the Objector's affidavit, opposed the application. She prayed that the court would not disturb the piece of land she occupies, since she has lived there for more than 50 years, and both her parents-in-law and her late husband, John Murira are buried in it. She feared that several graves will have to be moved if the land is subdivide in what she termed a fraudulent manner.

11. She deposed that all her family members have constructed in their respective portions of the land and that the Objector lives in her own portion of land. The Administrator admitted that the Objector's portion of land is less than hers, but insisted that it was less by very few points and that the area the Objector claims is very small. She also pointed out that whereas the Objector has only one daughter who is

married, the Administrator has four children to cater for.

12. Mr. Njiru learned counsel for the Administrator submitted that, the court cannot exercise any inherent jurisdiction as prayed in circumstances such as this one, where doing so would clearly cause injustice to the people involved. The parties are all living in their portions as per the subdivision of the land and Land parcel No. Kabete/Nyathuna/601 is no longer existing.

13. Mr. Njiru further submitted that the Objector is relying on the ruling of Rawal, J delivered on 26th August, 2008 which ordered for the re-surveying of the property but did not revoke the grant. In his view the consequences of not revoking the grant were that the holders of the land titles mentioned above still hold valid titles.

14. Mr. Njiru pointed out that James Kagucia and Peter Mwaniki had not been summoned to appear in court or swear Affidavits and it would not be fair to cancel their titles without granting them a hearing. Counsel asserted that the two persons are not sons of the deceased but are his brothers and therefore their interests do not flow from the interest of the widow via Succession Proceedings. That they simply claimed co-ownership of the land in par with the deceased, which is a right the Administrator recognized.

15. I have perused the pleadings together with the submissions of counsels on record and set out certain undisputed facts in the cause. It is not disputed that the deceased Paul Mbugua Kagucia was to hold the land known as L.R. Kabete/Nyathuna/601, in trust for himself and his brother Chrisotem Kagwima Kagucia (also deceased), who was the husband of the Objector. It is also not in dispute that the court, through the ruling of Rawal J as she then was, did forebear from revoking the grant issued to the Respondent as had been prayed by the Objector, and instead ordered that the suit property be re-distributed to provide for equal shares of the land for the two women.

16. From her pleadings the Respondent has admitted that the Objector's portion of land is less than it should be by what she calls "very few points." I observe however that the Objector's, portion measures 0.504 Ha which is less than one quarter of the suit land while that of the Respondent measures 1.774 Ha, being more than three quarters of the suit land. From the foregoing it is evident that the orders of the court made on 26th August, 2008 which have not been appealed against have not been obeyed.

17. The court has said times without number, that orders of the court must be obeyed. Court orders are made to be obeyed as soon as they are issued and it matters not whether one agrees with them or not. See *Hadkinson vs. Hadkinson (1952) All ER 567*, in which the court addressed this issue thus:

"Court Orders must be obeyed whether one agrees with them or not. If one does not agree with an order, then he ought to move the court to discharge the same. To blatantly ignore it and expect that the court would turn its eye away is to underestimate and belittle the purpose for which the court is set up".

The fact that the Administrator has four children while the Objector has an only child who happens to be a daughter and is already married is, neither here nor there, just as the size of the over compensation of the share of the land to the detriment of the Objector is not the issue. She should comply with the orders of the court.

18. To blatantly choose to disobey orders made by a Court of competent jurisdiction is to abuse the dignity of the court, and to have no regard whatsoever for the rule of law. These were the sentiments of Ibrahim J (as he then was) in *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828*, wherein he stated as follows:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and

until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.

19. The original land parcel No. Kabete/Nyathuna/601 should have been divided into two equal shares as ordered by the court and distributed between the two widows. The shares are not dependent on the number of children any of the litigants did or did not have, which seems to be the reason the Respondent used to distribute more than three quarters of the land to herself and leave less than a quarter of the land to the Objector. The shares are predicated on the fact that the two deceased brothers had equal shares in the suit property.

20. In the premise the court finds in favour of the Objector and allows her application with the following orders:

i. i) The titles to:

1. Kabete/Nyathuna/266

2. Kabete/Nyathuna/2663 born out of L.R. Kabete/Nyathuna/601

3. Kabete/Nyathuna/2660

4. Kabete/Nyathuna/2662 are all hereby revoked and cancelled.

ii) The land parcel to revert to the original L.R. Kabete/Nyathuna/601

iii) Land parcel No. Kabete/Nyathuna/601 to revert to the name of Paul Mbugua Kagucia.

iv) The Administratrix to comply with the orders of Rawal J as she then was, dated 26th August, 2008.

Those are the orders of the court.

SIGNED DATED and DELIVERED in open court this 19th day of July 2016.

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L. A. ACHODE

JUDGE