



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 830 OF 2009

IN THE MATTER OF THE ESTATE OF MBUGUA MWANGI (DECEASED)

RULING

PLEADINGS

The Applicant Kamau Mwangi Gichugi filed the application dated 25th October, 2014 brought under **Sections 47, 54 of the Law of Succession Act Cap 160 and Rules 49 and 73 of the Probate and Administration Rules** and sought from the

Court the following orders;

That an injunction should issue to the 3rd party Peter Kariuki Mwangi and David Kinyanjui Wainaina to restrain their servants/ agents from interfering, disposing or alienating land parcel Kiine/Rukanga 615 2.2 hectares pending the hearing of all applications and summons for revocation of the grant filed herein.

In the Applicant's affidavit filed on 28th October, 2014, the Applicant alluded to the following facts.

FACTS

The Applicant is the administrator of his later brother's estate; Mbugua Mwangi (deceased) who died on 17th July, 1977 as per the death certificate No. 110740. The Applicant is the only surviving relative of the deceased. He obtained the confirmed grant marked "**KMG1**".

On 23rd July, 2004 as the sole beneficiary of Kiine/Rukanga/615 herein referred to as the "Suit property", He obtained the Title deed of the property in his name and a copy is attached marked "**KMG2**" and had been in possession of the property since then.

In 2010, the Applicant opted to sell the suit property as exhibited by the sale Agreement of 7th June, 2010 marked "**KMG3**" and obtained the relevant Land Control Board Consents marked "**KMG4**". The process of transfer was not effected in the Kirinyaga Land Registry due to a complaint by one Peter Kariuki Mwangi and a pending application in **Court Case number 81 of 2000 at Muranga Senior Principal Magistrate's Court** by the said Peter Mwangi Kariuki. The letter of complaint is attached to the affidavit; marked "**KMG5**" and the application is in the Court file.

HEARING

The matter proceeded exparte. On 19th January, 2015 the Respondent was served through the advocate on record, Kamiru & Co. Advocates by registered post. The Court advised on direct service on the

Respondent. The Respondent was served and the affidavit of service was filed; on 17th February, 2015 the Court gave direction that the hearing of the 2 applications be conducted together; the application of 24th March, 2009 and the one of 28th October, 2014. On 17th March, 2015, the matter proceeded ex parte as the Respondent did not appear and was served with the hearing date and the affidavit of service was filed to that effect.

With regard to the present application; the Court perused the Court file **P & A 830 of 2009 Nairobi High Court and Succession Cause No. 81 of 2000** at **Muranga Senior Principal Magistrate's Court** and found the following.

ANALYSIS

In the Senior Principal Magistrate's Court, the applicant filed a petition on 13th March, 2000 but sought limited grant of letters of administration ad litem for the estate of Mbugua Mwangi. The grant sought was specifically limited to and for the purpose only of instituting Court proceedings in an intended civil suit arising out of fraud in which land Title No. Kiine/Rukanga/615 was transferred to Peter Kariuki Mwangi on 11th July, 1985. It was also for purposes of prosecuting a judicial review application to quash the decision of the Central Provincial Land Appeal Committee dated on 10th November, 1999 in Land Case No. Kirinyaga/136/99.

From the Court record, the Applicant did not apply for a full grant of letters of administration under **Section 67 of the Law of Succession Act Cap 160**. On 7th June, 2000; instead of the Applicant applying for the full grant he applied for confirmation of grant and was granted on 23rd July, 2004. This process in the absence of any other evidence or explanation was irregular as the required published notice of the application for the grant, inviting Objectors within a specified period and not less than 30 days was not complied with before the grant was confirmed. Secondly he did not obtain the full grant to enable him as administrator to gather and collect the assets and property of the deceased's estate.

The Chief Land Registrar Nairobi by a letter dated 11th August, 2014 ordered investigation into the matter. The Land Registrar Kirinyaga by letter dated 19th August, 2014 confirmed that there was a dispute on the land registration Rukanga/615 and its Land Registry documents indicated the following entries with regard to the suit property;

- a. "25th January, 1971 - Mbugua Mwangi (deceased) was the registered owner.
- b. 21st April 1977 – Peter Mwangi Kariuki was registered owner.
- c. 17th August, 2004 – Kamau Mwangi Gichoya filed Succession Cause 81/2001 in Muranga Principal Magistrate's Court. The entry was later removed E.I.E was entered (Entry in Error)".

In the letter the explanation is that the Applicant filed Succession Cause for the distribution of land in question which was not available for distribution. The dispute in Court has not been resolved to date.

The Court found that the orders sought cannot be issued at this stage for the following reasons;

1. There is still a dispute over Kiine /Rukanga/615; if it is part of the deceased's estate or not and available for distribution or not.
2. There is also a dispute of the ownership of the said land, if it belongs to Peter Mwangi Kariuki or Kamau Mwangi Gichoyi.
3. The matters in Court have not been heard and determined there are still issues pending;
 - i. The limited grant issued to the Applicant to file a Judicial Review in the High Court over the documents of the Central Provincial Land Appeal Committee has not been expended. The Judicial Review has never been heard to date in the matter filed as J.R. 510 of 2000.
 - ii. The Applicant did not obtain a full grant under **Section 67 of Law of Succession Act Cap 160**, to administer the deceased's estate in Muranga Senior Principal Magistrate's Court Succession No.

81 of 2000.

iii. The application of 27th July, 2000 by the interested party, Peter Kariuki Mwangi to revoke the confirmed grant for the limited grant issued to the Applicant has never been heard in Muranga Senior principal Magistrate's Court Succession No. 81 of 2000.

FINAL ORDERS

The application of 28th October, 2014 is not granted; the parties to obtain a hearing date from the Registry for hearing interpartes of the pending application to determine if the suit property is part of the deceased's estate or not. The necessary entries will follow in the Lands Registry and sale of land will then be confirmed or denied.

No orders to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MAY, 2015

M. MUIGAI

JUDGE

In the presence of:

Counsel for the Applicant.....

Counsel for the Respondent.....