



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 226 OF 2013
IN THE MATTER OF THE ESTATE OF JOSEPH KANGARI MUHU (DECEASED)

RULING

1. This matter relates to the estate of Joseph Kangari Muhu who died on 14th October 2012.
2. Representation to his estate was sought by Sarah Wangari Kangari and James Muhu Kangari through a petition lodged in this cause on 6th February 2013. The petitioners described themselves as widow and son, respectively, of the deceased. The survivors listed in the petition were the widow and four (4) children. The property listed included three landed assets, shares in limited liability companies and money in the bank.
3. A grant of letters of administration intestate was accordingly made to the petitioners, hereinafter referred to as administrators, on 26th April 2013. The grant was confirmed on 8th April 2014 on an application dated 3rd March 2014. A certificate of confirmation of grant of even date was duly issued.
4. The application that I am tasked with determining is dated 23rd June 2014. It is brought at the instance of the administrators. They seek orders directed at one Serah Mweru Muhu and the Land Registrar for Kajiado County. They would like Serah Mweru Muhu directed to surrender certain land certificates in respect of parcels of land subdivided from Kajiado/Olekasasi/1108. The alternative prayer is for the court to direct the Land Registrar to counsel the said titles.
5. Kajiado/Olekasasi/1108 was one of the assets distributed on 8th April 2014 on the basis that it formed part of the estate of the deceased. Serah Mweru Muhu is said to be a co-owner of the said parcel of land with the deceased. She is the mother of the deceased.
6. The respondent replied to the application *vide* her affidavit sworn on 8th July 2014. She depones that Kajiado/Olekasasi/1108 originated from a subdivision of Kajiado/Olekasasi/10 which was in the joint name of the respondent and the deceased, the property having been entrusted on them by her deceased husband. She asserts that the deceased herein did not buy the property. Kajiado/Olekasasi/10 was subdivided in 2009 into Kajiado/Olekasasi/1107 and 1108, measuring 4.5 hectares and 21.75 hectares, respectively, still in the joint names of the deceased and the respondent. In September 2009, the respondent consented to the sale of Kajiado/Olekasasi/1107 by the deceased to one John Keige. Kajiado/Olekasasi/1108 was thereafter subdivided into twelve portions, being parcels Kajiado/Olekasasi/1410 to 1421, registered in their joint names. She states that she had directed her lawyers to have some of the sub titles conveyed to her grandchildren, the children of the deceased.
7. The respondent asserts that the ownership of the property was in the nature of joint tenancy or

proprietorship as opposed to tenancy in common or co-ownership. She argues that she became the absolute owner of the property following the death of the deceased. She further argues that if the nature of the ownership was a tenancy in common the applicant was not entitled to claim all the subdivisions.

8. There is no reply to the allegations made by the respondent in her affidavit of 8th July 2014.

9. I directed on 1st July 2014 that the application dated 23rd June 2014 be disposed of by written submissions. Both parties filed their respective submissions. The applicant's submissions were filed on 7th August 2014 and are dated 6th August 2014. The respondent's written submissions are dated 8th October 2014 and were filed in court on 27th October 2014.

10. I have carefully perused through and studied the affidavits filed herein together with the documents annexed to them. I have also carefully perused through the submissions by the counsel appearing, together with the authorities cited, that is to say *Florence Ngao Jeremiah & Another vs Stephen Jeremiah Ngute* (2010)eKLR, *Lucy Wanja Irungu vs. Kamau Kabugi Thayu* Nairobi HCCC No. 673 of 2004 and *In the matter of the Estate of Edditar Wairimu Kamiri* (2012) eKLR. It is my view that there is only one issue for determination – whether Kajiado/Olekasasi/1108 was jointly owned or whether it was a case of a tenancy in common.

11. There is a copy of the title deed of the subject property. It is dated 12th August 2009. As at that date the property measured 21.75 hectares and was registered in the names of Kangari Muhu and Serah Kangari. It is not indicated on the title whether the ownership was in the nature of a tenancy in common or joint tenancy.

12. The proprietorship section in the title deed of 12th August 2009 indicates the proprietors of the property comprised in the title to be two persons mentioned in paragraph 11 above. The fact that the nature of the ownership is not indicated presupposes joint ownership as opposed to ownership in common. The respective shares of each of the two proprietors are not stated, meaning therefore both of them own the entire property in undivided shares.

13. The said property as registered under the regime of the Registered Land Act, Cap 300, Laws of Kenya, which has since been repealed by the coming into force of the Land Act 2012 and the Land Registration Act 2012.

14. The provisions in the Registered Land Act, which provided for joint tenancies and tenancies in common, were Sections 118 and 119. Section 118 stated-

“If one of two or more joint proprietors of any land, lease or charge dies, the Registrar, on proof to his satisfaction of the death, shall delete the name of the deceased from the register.”

15. Section 119 states-

“(1). If as sole proprietor or a proprietor in common dies, his personal representative, on application to the Registrar in the prescribed form and on production to him of the grant, shall be entitled to be registered by transmission as proprietor in place of the deceased with the addition after his name of the words “as executor of the will of ... deceased” or “as administrator of the estate of the deceased,” as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission-

(a) any trustee of the personal representative;

(b) any surrender of a lease of discharge of a charge by the personal representative ...”

16. The Land Registration Act 2012 has provisions that have really reproductions of Sections 118 and 119 of the Registered Land Act. These are to be found in Sections 60 and 61.

17. From the material before me, it is clear that the deceased and Serah Kangari were registered as joint proprietors of Kajiado/Olekasasi/1108. That being so, Section 118 of the Registered Land Act applied, and now so does Section 60 of the Land Registration Act. Following the death of the deceased, the Land Registrar became obliged, upon being so satisfied of the death, to delete the name of the deceased. The deletion of the name of the deceased would leave Serah Kangari as the sole proprietor of the said property.

18. Consequently, it is my holding that the said property became the property of Serah Kangari upon the demise of the deceased on 14th October 2012. The interest of the deceased united with that of Serah Kangari by the principle of survivorship or *jus accrescendi* and the said property, or its derivatives, do not form part of the estate of the deceased.

19. It would appear that the names of the parties herein – that is to say Sarah Wangari Kangari and Serah Mweru Muhu - are similar. But one is Sarah, while the other is Serah. It is not very clear to me which Sarah or Serah is referred to in the title document in respect of Kajiado/Olekasasi/1108, whether it is the applicant, Sarah Wangari Kangari, or the respondent, Serah Mweru Muhu.

20. Due to that lack of clarity, it may not be prudent to grant the application in terms of prayer 2. For if it turns out that Serah Mweru Muhu is the Serah Kangari referred to in the title, then I would be ordering her to surrender titles to her own property. If the Serah Kangari referred to in the title document refers to Sarah Wangari Kangari, then it would be asking her to surrender documents that have nothing to do with the estate.

21. As it is, I am unable to grant the orders sought in the application dated 23rd June 2014. I do consequently dismiss the application dated 23rd June 2014, with no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 9TH DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE