



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT SUCC.CAUSE NO. 544 OF 2013

(Originally NBI HC Succ. Cause No 2812 of 1995)

In The Matter of the Estate of M’Muga M’Magiri (Deceased)

SILAS MUTHURI M’LIKANYAAPPLICANT

Versus

LAND REGISTRAR, MERU CENTRAL DISTRICT RESPONDENT

SOFIA GAKII.....INTERESTED PARTY

RULING

Removal of restriction

[1] I have been called upon to determine the application dated 9th August 2010. The Applicant complains that he is a purchaser and registered proprietor of the suit property i.e. L.R NO. ABOTHUGICHI/MAIENE/1428 (formerly part of L.R NO.ABOTHIGUCHI/868). He has exhibited a Title Deed to show that. He says that as a proprietor, he has developed the said land extensively yet he cannot use his said land freely due to a restriction that was placed following a court order issued on 19th March 2009. He laments that this restriction has caused him irreparable hardship and damage. He now wants the said order to be set aside for being a source of hardship and injustice to him.

[2] The Interested party/Respondent has alleged collusion between the Applicant and one of the administrators Jerica Kagwira in the sale and transfer of the suit property. It is contended that these are acts of intermeddling and should be condemned. It was also submitted that the land should revert into the name of the deceased as the property of the estate. The Respondent also accuses the administrators of; (1) not being keen on applying for confirmation despite the order of the court; and (2) being “*at loggerheads and not working in consultation and performance for the benefit of all beneficiaries but some are pursuing individual interests...*”.

DETERMINATION

[4] I have perused this file and I observe that it is a very old cause. It has seen many court

attendances as well as applications. It has also travelled from Nairobi to Meru and it has been dealt with by a number of different judges in Nairobi and in Meru. I must admit that I have agonized over this file, and I think that it is time the cause should be brought to closure. But, what is the best way of achieving justice to the parties herein? I note that Onyancha J ordered the parties to apply for confirmation of the grant within 90 days from 4th December 2008. I have not seen or been shown any such application. In fact the Applicant and the interested party have complained that the administrators have refused to apply and are not keen on applying for confirmation. The Applicant thinks this unwillingness to apply for confirmation is because they are not suffering, for they have sold the other estate property and are not in occupation thereof. He also says that it is curious that they did not place a restriction on the other properties like they did with his property if indeed they were preserving the estate as this matter is finalized. The Interested party thinks the unwillingness to apply is due to selfish reasons and wanton intention to intermeddle with the estate by the administrators. These are substantial matters when they are brought to the attention of the court for which the court must seek to unravel given its role in succession matters and the requirement of the law on sale of estate property. Therefore, before I determine the application dated 9th August 2010, and before I label the acts complained of as intermeddling, I should think that answers to some pertinent questions especially why confirmation has not been applied for and the status of the estate are desirable. Therefore, I direct that the substantive counsels herein shall appear before me on 9th December 2015 for further directions on this matter. It is so ordered.

Dated, signed and delivered in court at Meru this 1st day of December 2015

F. GIKONYO

JUDGE

In the presence of:

Kimata advocate for interested party

Murithi advocate for M/s Koome for applicant

F. GIKONYO

JUDGE