



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 50 OF 2013

IN THE MATTER OF THE ESTATE OF JULIUS MUTHURI MWAMBA

JULIA GACHERI M'ARIMI.....1ST PETITIONER

TITUS GITUMA MURITHI.....2ND PETITIONER

VERSUS

TABITHA NKANACI MWAMBA.....1ST APPLICANT

RAHAB MWAMBA.....2ND APPLICANT

SALOME MUTETHIA.....3RD APPLICANT

J U D G M E N T

1. The 1st petitioner petitioned for the grant of letters of administration of the deceased estate in Chuka Succession Cause No.130 of 2012. The grant of letters of administration to the deceased estate was gazetted
2. in Kenya Gazette vide Legal Notice No.6481 in which the petitioner was JULIA GACHERI ARIMI. The petitioner in Form P&A 5 had indicated the deceased was survived by herself and a child named F K, a minor aged 2 years. The deceased asset was given as LR. NO.ABOGETA/LOWER-CHURE/839 whose value was given as Kshs.300,000/-.
3. The lower court issued grant of letter of administration intestate on 11th June, 2012 to JULIA GACHERI ARIMI, the 1st petitioner herein and TITUS GITUMA MURITHI. The grant was subsequently confirmed notwithstanding that six(6) months periods had not expired in favour of the two petitioners giving ½ an acre of ABOGETA/L-CHURE/839 to TITUS GITUMA MURITHI and balance to the 1st petitioner. The petitioner had incidentally sold ½ an acre to the 2nd petitioner who was included in the cause for the first time as a purchaser and not a petitioner, however in the confirmed grant the said purchaser TITUS GITUMA MURITHI is named as a 2nd petitioner notwithstanding that he had not petitioned for grant of letters of administration of the estate intestate of the deceased herein.

4. The applicants filed the instant application on 29th January, 2013 seeking several orders. The relevant grounds for this application are that the Chuka Senior Principal Magistrate Succession Cause No. 130 of 2012 be revoked or annulled and titles in regard of parcels numbers ABOGETA/LOWER-CHURE/1449 and 1450 resultant from subdivision of ABOGETA/LOWER-CHURE/839 be cancelled and same do revert to the name of the deceased for a fair and just distribution and that court do provide for the applicants. The application is based on the grounds on the face of the application inter alia: that the Chuka Principal Magistrate court had no jurisdiction to hear and determine the cause; that the proceedings to obtain the grant were defective in substance, that the grant was obtained fraudulently by the making of a false statement or the concealment from the court something material to the cause, that the grant was obtained by means of untrue facts essential in law to justify the grant; that the distribution is unjust; unfair and has failed to provide to the persons entitled to the estate; that the 1st applicant lives and works on Abogeta/Lower-Chure/839 which following the subdivision became plot No's 1449 and 1450 on which land the applicants have been brought up all their lives; that the petitioners are not the rightful persons who should have petitioned for letters of administration and that the 1st petitioner wrongfully sold part of Abogeta/Lower-Chure/839 instead of distributing the property to the beneficiaries.
5. The applicants in their supportive affidavit have deponed that ABOGETA/LOWER-CHURE/839 was registered in the name of the deceased to hold in trust for the applicants as a family land and that they had been living on the land without any objection during the life time of the deceased. That the applicants have carried out extensive developments. That the deceased was not married to the 1st petitioner but had a child with her. That on 12th October, 2012 the 1st petitioner with surveyors and two administrative officers and chief destroyed the applicants properties, excised part of the land and fenced it giving the applicants 10 days' notice to vacate from the land. The petitioners action prompted the applicants to seek legal action and that is when they discovered the existence of Chuka Law Courts Succession cause No.130/2012 leading to their filing of the instant application.
6. The 1st petitioner filed a replying affidavit on her behalf and that of her co-petitioner deponing that she was wife of the deceased and the land in question was solely the property of the deceased. The 1st petitioner admitted the 1st applicant was mother to the deceased whereas the 2nd and 3rd applicants are sisters to the deceased: and that the applicants were not in occupation of the deceased land as they have their own lands. The 1st petitioner deponed further that the 1st applicant came to live on the deceased land in 2008 and caused a lot of problems for the 1st petitioner and her husband, the deceased, that they moved to a rented house at Nkubu market but continued to use the land and denied having come to the land on 18/10/2012. That following the death of the 1st petitioner's husband the applicants demolished her house and they put their own structures on the land and labelled the 1st petitioner as a stranger.
7. The 1st petitioner deponed that in meetings held on 30/1/2011, 28/6/2011 and 22/8/2011 and 22/8/2011 the applicant acknowledged her as wife to the deceased and that she could use his land to support the deceased daughter FAVOUR KANGAI. The documents had been annexed. The 1st petitioner admitted she obtained chief's letter and petitioned for the grant of letters of administration and that the land and all developments on the land belonged to her husband. She denied that the 1st petitioner is beneficiary or dependent of the estate of the deceased.
8. The applicants were represented in this cause by Mrs. Ntarangwi, learned Advocate whereas the petitioners were represented by Mr. Mwirigi learned advocate. Both advocates sought directions that the applicant's application be determined by way of written submissions. The submissions for applicants were filed on 2nd July, 2013 and further submissions on 13th May, 2014 whereas the submissions for the petitioners were filed on 29th April, 2014. I have carefully perused the pleadings, the counsel submissions and authorities in support of the parties opposing positions. The issue for determination in this cause can be summarized as follows:-

1. ***Whether the Senior Principal Magistrate court at Chuka had jurisdiction to hear and determine Succession Cause No. 130/2012 before it?***
2. ***Whether the applicants have established sufficient grounds under Section 76 of the Law of Succession Act to warrant revocation of the grant.***

The Chuka Senior Principal Magistrate's succession Cause NO. 130 of 2012 was filed by the 1st petitioner alone. The same was gazetted in the sole name of the 1st petitioner. It is not clear how the 2nd petitioner who is not related to the deceased and who is a purchaser from the 1st petitioner and not a dependent or beneficiary to the deceased estate came to be joined as a 2nd petitioner. The grant issued joining him as a joint petitioner is contrary to provisions of Section 58(2) and 66 of the Law of Succession Act as in the instant cause, there being a minor this was a continuing trust in which the 1st petitioner having petitioned for grant alone the court was obligated, subject to Section 66 to appoint the 1st petitioner and not less than one or more person proposed by the 1st petitioner failing whereof the court should have appointed a joint administrator of its own motion.

Section 58(1) provides:-

58. (1) Where a continuing trust arises-

(a) no grant of letters of administration in respect of an intestate estate shall be made to one person alone except where that person is the Public Trustee or a Trust Corporation.

(b) no grant of letters of administration with the will annexed shall be made to one person alone except where

(i) that person is the Public Trustee or a Trust Corporation; or

(ii) in the will the testator has appointed one or more trustees for the continuing trust who are willing and able to act.

10. The 2nd petitioner falling not under the category envisaged by Section 66 of the Law of Succession Act and having not been appointed by court in accordance with the provision of Section 58(2) of the Law of Succession Act is a stranger and intermeddler to the deceased estate and his name is struck out as the 2nd petitioner.

11. The 1st petitioner in Form P&A 5 gave the value of the deceased estate as worthy Kshs.300,000/- which is beyond the jurisdiction of the Senior Principal magistrate court in succession matters.

Section 48(1) of the Law of Succession Act provides:-

48. (1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings: Provided that for the purpose of this section in any place where both the High Court and a resident magistrate's court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act.

12. In view of the above section the trial court exceeded its jurisdiction in purporting to hear and determine the Succession Cause without jurisdiction, and all that the Senior Principal Magistrate purported to do and determine is a nullity.

13. The applicants claim to be beneficiaries to the deceased estate and that the land in issue is a family land whereas the 1st petitioner strongly denied that. The applicants have averred to have been on the land all of their lives and to have acquired beneficial interest. This is an issue which is strongly contested in two conflicting affidavits and in view of having found that the trial court had no jurisdiction to determine the cause filed before it, I am of the view that the issue of who are the beneficiaries should be dealt with once a proper cause is filed in court with jurisdiction where parties will be at liberty to pursue their rights.

14. Having found that the Chuka Senior Principal Magistrate had no jurisdiction to hear and determine this cause I need not go further on other grounds as that ground only is sufficient to dispose of the application. The grant issued by the Senior Principal Magistrate at Chuka on 11th June, 2012 and confirmed on 17th July, 2012 is revoked and the titles created from Abogeta/L-Chure/839 to plot No. Abogeta/L-Chure/1449 and 1450 are cancelled and the same reverted to the name of the deceased in number Abogeta/L-Chure/839. The rightful dependants and/or beneficiaries are at liberty to petition for grant of letters of administration or issue citation as the case may be as I have not determined at this stage who are dependants and/or beneficiaries.

15. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF JULY, 2014.

J. A. MAKAU

JUDGE

Delivered in open court in the presence of:

1. Mrs. Ntarangwi for the applicant

2. Mr. Mwirigi for the petitioner

J. A. MAKAU

JUDGE