



REPUBLIC OF KENYA

High Court at Embu

Succession Cause 211 of 2008

In the matter of the Estate of NJERU MBURUNGUA (DECEASED)

SAMUEL MUTEMBEI NJERU.....PETITIONER/RESPONDENT

VERSUS

MERGERY GATAVI MBOGO.....PROTESTOR/APPLICANT

R U L I N G

This is a Protest against the Summons for confirmation of grant filed by the Petitioner herein dated 24/6/2009. The Protestor is one Mergery Gatavi Mbogo. The estate is in respect of one NJERU MBURUGUA and he died interstate on 24/8/1993. The petition herein was filed on 10/6/2008 by the Petitioner who says he is the son to the deceased.

The sole property in the deceased's estate is land No. NGANDORI/KIRIARI/940. The said land is registered in the name of the deceased Njeru Mburugua. The Protestor is the widow of Joseph Gitonga Munene, who she says had bought this parcel of land from the late Mburugua. The Petitioner herein says he is a son to the late Mburugua but he does not stay on the land in issue.

The Protestor has in her evidence stated that she was the 2nd wife of Joseph Gitonga Munene who died in 2005. Gitonga's first wife died when she got married in 1994. Mr. Gitonga had 4 children with his first wife. And the Protestor found Gitonga and the 4 children staying on that land. She has continued to occupy the land and work it. She left briefly when house was burnt soon after she filed the protest herein.

In the evidence it has come out clearly that the Petitioner has other siblings. The father's property is in Meru and a succession cause was filed in Meru High Court. And that this one was filed here in Embu High Court because the property is in Embu. This is very unprocedural. The Court can not or rather should not issue more than one grant in respect of the same estate. Even if the deceased had said as is alleged that this suit land should be inherited by the Petitioner, the said property should have been listed in the schedule of properties for distribution in the succession cause before Meru High Court.

Even as the brothers of the Petitioner filed the consent dated 14/5/2009, I can clearly see from Form P&A 5 filed herein that the Petitioner listed himself and Rufus Ngoroi Michael as the only dependants of the deceased of the deceased. Rufus is an alleged grandson.

The evidence on record proves otherwise. Rufus is not even a relative of the deceased. Secondly Form 38 (consent) is filed and signed by the Petitioner himself. None of his brothers/sisters have given

the consent.

The letter by the Assistant Chief Patrica N. Mbogo is full of falsehoods. He lists the Petitioner and Rufus as the deceased's dependants. The Petitioner has told this Court that he wishes to give a share of the land to the children of the late Gitonga. This cannot be true because his Form 9 (affidavit in support of summons for confirmation for shows he wants to inherit the whole parcel by himself the documents from the Land Control Board produced here as Protestor's EXB3 & 4 are very old documents. They are not talking about Districts but Land Control Board. The consent for transfer was given way back on 12/3/1981. The late Gitonga and family have been in possession. The Petitioner has never lived on this land even though his father passed on in 1993/ it is only in 2008 after the death of Gitonga that he came to file this cause using a lot of untruths.

My finding is that this parcel of land did not form part of the estate of Njeru Mburugua in the Meru High Court succession Cause because the family of Njeru Mburugua knew well that they had no share in this land as it had been sold by their father to Gitonga.

The late Gitonga was buried on this land without the Petitioner's family raising any issues. This goes further to confirm that they were aware of the sale agreement between their father and the late Gitonga. There may not have been any sale agreement but the documents from the land control board would not have been issued if the board did not confirm for itself that an agreement had been reached.

Secondly we must bear in mind that the parties to this arrangement are no more. Be it as it may may, the Grant issued herein cannot stand because of the falsehoods the Petitioner used to obtain it. It clearly shows there is something he is hiding.

I therefore allow the protest and annul the Grant issued. A fresh grant to be issued in the names of the Protestor who will apply for confirmation as per the law.

Rights of appeal explained.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF OCTOBER 2012.

**H.I. ONG'UDI
J U D G E**

In the presence of:-

Mrs. M. Njuguna for Fatuma for Petitioner

Mr. Rorige for Ndorongo for Protestor

Njue CC