

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 23 of 2008

JANE THAGANA.....1ST PLAINTIFF

MARGARET MUTHONI.....2ND PLAINTIFF

NANCY WANGUI.....3RD PLAINTIFF

VIOLET WAMBUI.....4TH PLAINTIFF

VERSUS

ALICE MUMBI NJAGI.....1ST DEFENDANT

GLADYS WANJIRU NJONJWE.....2ND DEFENDANT

J U D G M E N T

The 4 plaintiffs have sued the 2 defendants jointly and severally for the following orders:-

- (a) *An order that the registration of Esbon Njagi and the second defendant as proprietors of piece of land NGARIAMA/RUNGETO/154 be cancelled so that the said land reverts to the estate of NJONJWE MUNGAI (deceased)*
- (b) *An order that the said piece of land NGARIAMA/RUNGETO/154 as the estate of Njonjwe Mungai be distributed among the plaintiffs and the defendant as heirs of the said deceased.*
- (c) *Costs of this suit.*

In paragraph 5 of the plaint, the plaintiffs have contended that the deceased Esbon Njagi got himself fraudulently registered as the proprietor of the said piece of land absolutely, and also got the second defendant registered fraudulently as entitled to a life interest. They have particularized the particulars of fraud but I need not repeat them for purposes of this Judgment. The defendants failed to file any statements of defence and so the matter proceeded by way of formal proof with the 1st plaintiff testifying on behalf of the other plaintiffs. She also called one Cyrus Kironji who was Land Registrar in Kirinyaga District. The Land Registrar gave the history of the land parcel in question and produced several documents in respect of the same. On her part, the 1st plaintiff told the court that the co-plaintiffs were sisters. The 2nd defendant is their mother while the 1st defendant Alice Mumbi was their sister-in-law. Njonjwe Mungai (deceased), who was the original owner of the land in question was their father. 1st defendant's husband who they accused of fraud was their brother. She stated that their late brother was registered as proprietor of the land in question following their father's death without their consent. As of today, the parcel in question is registered in the name of their mother who has a life interest in the same. They told the court that they had made a reference to the Land Disputes Tribunal in Gichugu which had directed that they share the land. On the Tribunal Award which was produced by the plaintiff as exhibit, I would state that the same has no force of law as there is no evidence that the same was ever adopted as a decision of the court. The same would also be a nullity for lack of jurisdiction on the part of Tribunal to interfere in the rights of a registered owner.

Counsel for the plaintiff filed a written submission and urged the court to find that the property of Njojwe Mungai was irregularly succeeded by Esbon Njagi (deceased) together with the 2nd defendant. He asked the court to cancel the said registration and order that a proper succession cause be filed where all the parties herein can stake their claim. It is clear from this last submission that what the plaintiffs are aspiring to do is to re-open the succession cause in respect of the said property so that they can claim a share. This is in my considered view a circumvention of the Law of Succession. I have nonetheless considered all the evidence placed before me by the plaintiffs. I note first and foremost that Njonjwe Mungai died before the enactment of the Law of Succession Act (Cap 160) of the Laws of Kenya which came into force in 1981. The land in question as at 4/8/1980 when the certificate of Succession was issued was governed by Kikuyu Customary Law. Under Kikuyu Customary Law the plaintiffs being daughters could not inherit land. There was therefore no fraud when their names were left out in the certificate of succession dated 4/8/80. They were simply not entitled to inherit even an inch of their father's land. The Law of Succession Act cap 160 could not operate in retrospect and the plaintiffs cannot therefore claim any rights over it. According to plaintiffs Exhibit 2 the certificate of Succession was issued by a court of law. It is duly stamped and signed by the District Magistrate Gichugu. It would not therefore be correct to say that the late Esbon Njagi did not file a succession cause and that he acquired the land fraudulently. I find and hold that no fraud was involved in that succession and further that the 4 plaintiffs were not entitled to any land. The same rightly passed to Esbon Njagi as the sole heir with the 2nd defendant who was the deceased's wife having a life interest in the same. Prayer (a) of the applicants must therefore fail. The ownership of parcel No. NGARIAMA/RUNGETO/154 rightly and lawfully devolved from Njonjwe Mungai to Esbon Njagi and this court cannot interfere with the same. The plaintiffs have failed to prove their case against the defendants on a balance of probabilities. Their case is therefore dismissed with no order as to costs as the same was not defended.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 5th day of Nov 2009.

In presence of:- Mr. Njage for the plaintiffs