



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC. NO. 41 OF 2019

IN THE MATTER OF LAND ADJUDICATION ACT (CAP 284) LAWS OF KENYA AND IN THE MATTER ARISING IN THE MEANING OF FRAUD OF LAND PARCEL NO. TUTUA/RWARERA/14 ALLOCATED BY MINISTER OF LANDS THE LATE JACKSON ANGAINE BY SUB-DIVISIONS BY OFFICE PROFESSIONAL MISCONDUCT AND ABUSE OF OFFICE BEING A SCHEME LAND

STEPHEN KIRIINYA1ST APPLICANT

HELLEN NTIRING'A & 5 OTHERS2ND APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

LAND ADJUDICATION OFFICER.....2ND RESPONDENT

MERU CENTRAL AND BUURI SUB-COUNTY DIRECTOR OF LAND

ADJUDICATION AND SETTLEMENT3RD RESPONDENT

RULING

1. Vide an application dated 13.8.2019, the applicants seek the following orders:

- i. "This honourable court do grant the applicants leave to file application against the respondents pending filing summons for limited grants of letters of administration ad litem as a matter of utter most urgency in the matter of law for want of fraud.
- ii. The honourable court further do grant and issue an order compelling the 2nd respondent to rectify register or/and cancel subdivisions of land parcel No. TUTUA/RWARERA/14 and revert to original number to affect equal subdivisions among beneficiaries.
- iii. The Honourable court be pleased to issue an order restraining of further issuance of title deeds by the district land registrar at Meru central no's 15 and 5289."

2. The grounds in support of the motion are that:

- a. "The 2nd respondent by way of abuse of office has sub-divided land parcel No. Tutua/Rwarera/14 fraudulently and allocating to the strangers in contravention of the minister of lands allocation register.
- b. At all the times the 2nd respondent has been discriminating the applicants and chasing the applicants from the adjudication office.
- c. Despite several requests by the applicant to be heard by the 2nd respondent has continued to discriminate the applicants.
- d. The action taken by the 2nd respondent of discriminations is motivated by malice and contempt of minister of lands allocation and breach of rules of natural justice".

3. The applicants have also sworn a supporting affidavit where they have deponed that:

The land parcel no. Tutua/Rwrera/14 was allocated to their mother Zipporah Kanono M'Mungania and registered in the name of M'Mungania M'Marete, their father in trust in accordance to Kimeru custom by the minister of lands the late Jackson Angaine. The applicants also averred that the 2nd respondent in contravention of minister of lands allocation secretly and clandestinely by abuse of office subdivided land parcel No. Tutua/Rwarera/14 to one member of the family and strangers. They further stated that after the discovery of the fraudulent subdivisions, the applicants lodged a complaint to the 2nd respondent but they were chased away and the 2nd respondent didn't take any action to revert the land No. Tutua/Rwarera/14 by cancellation of sub-division in the name of their father M'Mungania M'Marete. They also averred that despite several complaints and objection to the 2nd respondent, the 2nd respondent has neglected and/or failed to cancel the sub-division of their late father's land parcel no. Tutua/Rwarera/14 at all and that 1st respondent failed and/or neglected his duty to advise the 2nd and 3rd respondents that the action taken by the 2nd respondent of subdivisions of the suit land was motivated by malice and breach of minister of lands allocation and renders the subdivisions null and void.

4. The application was served but no response was filed in opposition to the application.

5. A perusal of the application reveals that applicants are claiming their father's land Tutua/Rwarera/14 and they desire to file limited grant of letters of administration ad litem.

6. Section 4 (1) (a) of the law of succession act provides that:

“Except as otherwise expressly provided in this Act or by any other written law—(a) succession to immovable property in Kenya of a deceased person shall be regulated by the law of Kenya.....”.

7. The law mentioned therein is the law of succession act. The applicants cannot by pass this step as the grant is what will give them a legal platform to step in their father's shoes. Furthermore, no reasons have been advanced as to why they have not applied for the grant. There is no evidence of when death occurred yet they have an annexure, the letter form Chief dated 11.7.2018 confirming the family members. It is even not clear whether the property is of their mother or their father.

8. The bottom line is that the applicants do not have locus standi to file the suit.

9. Further it is noted that the prayers sought are substantive in nature and should be applied for in a suit and not via a miscellaneous application.

10. The upshot of my finding is that this application has no merits and the same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4TH DECEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

1st applicant

HON. LUCY. N. MBUGUA

ELC JUDGE