



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L NO. 22 OF 2015

BEATRICE WANGUI KAMAU

ALIAS BEATRICE WANGUI KAGUNDA.....APPLICANT

VERSUS

JOHN KARIUKI KAMAU.....1ST RESPONDENT

DEPUTY REGISTRAR, HIGH COURT ELDORET.....2ND RESPONDENT

RULING

Beatrice Wangui Kamau alias Beatrice Wangui Kagunda has come to court against **John Kariuki Kamau** and the **Deputy Registrar, High Court Eldoret** as respondents by way of Notice of Motion seeking for an order that the 2nd respondent be empowered to sign RL 7 and RL 19 to enable subdivision in parcel of land known as ELDORET MUNICIPALITY BLOCK 11/46 belonging to the father who is deceased to enable the applicant get her share therein. The application is based on grounds;

- (a) That the plaintiff is the beneficiary of the parcel of land known as ELDORET MUNICIPALITY BLOCK 11/46.***
- (b) That grant was issued in the name of the 1st respondent.***
- (c) That the 1st respondent has refused to sign the transfer documents to the detriment of the applicant herein.***
- (d) That the 2nd respondent be compelled and/or empowered to sign transfer documents of parcel ELDORET MUNICIPALITY BLOCK 11/46 in the place of the 1st respondent who has refused to do so.***
- (e) That the plaintiff will suffer irreparable loss should the said transfer not be done on the suit land.***

The application is supported by the affidavit of the applicant who states that she is one of the beneficiaries of the estate of the late Simeon Kamau Kuria (deceased). That her mother is also deceased and that they did apply for letters of administration and the 1st confirmation of a grant was issued and she was left out of the said grant by the 1st respondent. That she did object and the court made a ruling in which she was to be included as a beneficiary in the Estate of her late father (Simeon Kamau Kuria). That the second grant was confirmed on 25th November, 2014 with her name as one of the beneficiaries. That grant of

representation to the Estate of Simeon Kamau Kuria was issued to the 1st respondent herein.

That during confirmation, the said plot was distributed to each beneficiary hers being 0.330 acres. That despite several pleas to the 1st respondent to sign instruments transferring her share to her, he has blatantly refused to do so. That continued refusal to sign the necessary land transfer forms is an affront to her right to land.

She contends that with leave of court, the 2nd respondent has the powers to sign RL 7 and RL 19 thereby giving effect to the grant. That the said court has the powers and discretion to grant the orders sought against the defendant. She prays that the 2nd respondent be empowered by this Honourable court to sign the said instruments transferring her share into her name as she will suffer irreparable loss and damage if the orders prayed for are not granted.

The issue before court is the preliminary objection dated 9.11.2015 wherein the defendant states that the application is incompetent, fatally defective and bad in law in so far as the subject property LR No. Eldoret Municipality Block 11/46 is the asset comprised in the Estate of the late Simeon Kamau Kuria in Eldoret Hc Succession Cause No. 218 of 1997 and that the court lacks jurisdiction to entertain the application. Moreover, that the application is vexatious, frivolous and an abuse of court process.

I have considered the application, the objections and the provisions of Order 37 of the Civil Procedure Rules.

“37. 1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a Judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions-

(a) any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;

(b)

(c)

Though the proceedings before court are not brought by way of originating summons, the applicant appears to be seeking the determination of her rights as a heir of the deceased and is seeking for the order for the administration of the real estate of the deceased. I do find that the High Court after confirmation of grant under Section 71 of the law of Succession Act became ***functus officio*** and could only entertain the application for revocation of grant.

The grant herein was confirmed on 25.11.2014 where the applicant was awarded 0.330 acres of Eldoret Municipality Block 11/46. I understand the applicant to be attempting to compel the administrator of the Estate of the deceased to formally distribute the property as per the certificate of confirmation.

I do find that the applicant falls within application contemplated by Order 37 Rule 1(a). Moreover, that this court has jurisdiction to hear and determine disputes in accordance with Article 162(2) (b) of the Constitution and with section 13 of the Environment and Land Court Act, Cap. 12A Laws of Kenya. I do find that this dispute revolves on use, occupation and title to land and therefore, the court has jurisdiction to entertain the same.

The process of succession having been completed until confirmation of grant, the only remaining process is for the transmission of the property to the heirs.

Section 49 of the Land Act provides;

“49. If one of two or more joint proprietors of any land, lease or charge dies, the Registrar shall, on proof of the death, delete the name of the deceased from the register by registration of the death certificate.”

Section 50 of the said land Act provides;

“50.(1). If a sole proprietor or a proprietor in common dies, the proprietor's personal representative shall, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative's name of the words “as executor of the will of (.....) [deceased]” or “as administrator of the estate of (.....) [deceased]”, as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission-

(a) any transfer by the personal representative; and

(b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.

Section 51 of the Land Act provides;

51.(1) Subject to any restriction on a person's power of disposing of any land, lease or charge contained in an appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests that are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.

(2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.”

The meaning of the above sections is that upon issuance of grant and confirmation of the same, the Land Act, No 6 of 2012 comes into place.

When it comes to confirmation of the rights of the legal representative, heirs and beneficiaries under the Land Act, 2012, it is the Environment and Land Court that has jurisdiction to entertain disputes arising from the confirmation of grant and therefore I do find that this court has jurisdiction. The preliminary objection is dismissed with no order as to costs this being a family dispute.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF JANUARY, 2016.

ANTONY OMBWAYO

JUDGE