



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO 273 OF 2014

**VIRGINIA WARUGURU MBOGO (Suing as legal representative of the estate of CHARLES MBOGO MANYARA (Deceased))
..... PLAINTIFF**

VERSUS

**JANE WANJIRU MURURI.....1ST
DEFENDANT**

**GICHEHA MANYARA MBOGO.....2ND
DEFENDANT**

RULING

(Application for injunction; land having been transferred by 2nd defendant as administrator to the 1st defendant by way of transmission; allegation that plaintiff was the one to benefit from this land; court of view that matter relates to distribution of the estate of a deceased person and the correct court is that which issued the confirmed grant; application dismissed)

This suit was commenced on 30 September 2014 by way of plaint. Together with the plaint, the plaintiff filed the subject application dated 29th September 2014, which is the subject of this ruling. It is an application seeking the principal order:-

That pending the hearing and determination of this suit this Honourable Court be pleased to issue an order restraining the defendants whether by themselves, servants, agents and/or workers from entering, occupying, disposing and/or otherwise dealing with parcel of land title No. Nyandarua/Karati/2540. The defendants have opposed the application by filing a Replying Affidavit.

The facts of the case are largely not in dispute. One Mumbi Manyara (now deceased), was the registered proprietor of the land parcel Nyandarua/Karati/263. Mumbi Manyara left several children. One was Charles Mbogo Manyara, now deceased, and husband to the plaintiff. The defendants are also children of Mumbi Manyara. Upon the demise of Mumbi Manyara, a succession cause was filed, being Nakuru High Court Succession Cause No. 35 of 1995, whereupon the 2nd defendant was appointed the administrator of the Estate. A grant of letters of administration was issued and the same was confirmed on 3 June 1996. The only noted asset of the estate was the land parcel Nyandarua/Karati/283. The same was ordered to be distributed as follows :-

- 1. Gicheha Manyara Mbogo - 5.5 acres**
- 2. Charles Mbogo Manyara - 6.0 acres**

3. David Mungai Wanjiku - 4.0 acres

4. Samuel Kungu Kamau - 1.5 acres

5. Peter Chege Mwangi - (not clear)

6. Gicheha Manyara Mbogo - 3.0 acres (in trust of others).

The 2nd defendant, Gicheha Manyara Mbogo, as administrator, first transferred the land parcel Nyandarua/Karati/283 to himself and later sub-divided it into several portions so that he can distribute it to the other beneficiaries. The land parcel No. 283 was therefore sub-divided into several portions, all of which were registered in the name of the 2nd defendant. One of the parcels that emerged is the parcel Nyandarua/Karati/2540 which comprises of the 3 acres that was to be held in trust. According to the 2nd defendant, his mother had instructed him to give this 3 acres to their eldest sister, who is the 1st defendant. The 2nd defendant thus transferred the 3 acre portion to the 1st defendant, who is now the registered proprietor.

The plaintiff's position however, is that the 1st defendant was not meant to benefit from this land, and that her husband, of whom she holds a grant of letters of administration ad litem, was entitled to half of it, which is 1.5 acres. In her suit, she has averred that the property is occupied by one Mark Manyara who is legally entitled to it. In the suit the plaintiff has sought the following prayers :-

(a) A declaration that the 2nd defendant has and continues to be in breach of his duties as administrator of the Estate of Mumbi Manyara.

(b) A cancellation of the title in the name of the 1st defendant and subsequent registration in the plaintiff's name.

(c) A perpetual injunction restraining the defendants from entering, occupying, claiming ownership and or otherwise dealing with Nyandarua/Karati/2540.

(d) Costs of the suit.

In their Statement of Defence, the defendants denied that the plaintiff's late husband was to benefit from this 3 acre portion. They have also pointed out that Mark Manyara Mbogo is son to the plaintiff, and have averred that he is in temporary and unlawful occupation of the structure on the land, which was left by the late Mumbi.

In her supporting affidavit, the plaintiff inter alia averred that she reported the matter to the Chief and she annexed a copy of a "decision" of the Assistant Chief which, where material, states that the land in issue is 5 acres and is to be distributed as follows :-

(i) Jane Wanjiru Muiruri - 1.5 acres

(ii) Virginia Waruguru Mbogo - 1.5 acrs

(iii) Gicheha Manyara Mbogo - 2 acres.

In the same "award" (for lack of a better term), the Assistant Chief has also stated that "it was agreed that Jane Wanjiru Muiruri will not benefit from the Karati Scheme Land", which statement, I am unable to reconcile with his earlier "award", distributing 1.5 acres to her. Mr. Kibet for the plaintiff, attempted to rely on this "award", but in my view, it is not worth the paper it is written on and I will disregard it in its entirety.

Mr. Kibet further stated from the bar, that the 1st defendant was allocated some land in Kiambogo, and that she is married, but there is absolutely no proof of these averments. The latter statement, that she is

married, does not help Mr. Kibet, for in the current constitutional dispensation, even married women can claim inheritance from their parents.

Mr. Okeke for the defendants argued that if the plaintiff has a quarrel in the manner that the 2nd defendant has distributed the 3 acres, then her remedy is to go to the court that confirmed the grant, so that it can interpret who was to benefit from the 3 acres that were to be held in trust. He trashed the "award" of the Chief as having no legal effect in transferring proprietary rights and neither could it be deemed a contract. He pointed out that the plaintiff was the biggest beneficiary of the distribution by getting 6 acres whereas all the rest got less land. He also asked that this suit be struck out.

I have considered the pleadings and the rival arguments. Although the matter is couched as a fight over the ownership of the title comprised in the parcel Nyandarua/Karati/2540, the genesis of it, is the distribution of the 3 acres that the 2nd defendant was to hold in trust for the rest. The interpretation that the 2nd defendant has chosen to give it, is that the 1st defendant is entitled to the 3 acres, so that she is not disinherited. The plaintiff thinks that out of these 3 acres, she is entitled to 1.5 acres. To me, the only court that can state who is entitled to the 3 acres, is the court that confirmed the grant of letters of administration. The matter really boils down to the interpretation of the confirmed grant.

In my opinion, the plaintiff therefore needs to file an appropriate application to the Court that issued the grant. It is that court which will determine whether or not the 1st defendant is entitled to the 3 acres or whether the plaintiff has a share of 1.5 acres as alleged. I am not therefore convinced that the plaintiff has laid out a prima facie case with a probability of success.

For the above reasons, I am of the view that the application is misplaced and is hereby dismissed with costs. I however hesitate to strike out the suit as I do not have the

appropriate application before me to enable me do so.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAKURU THIS 22ND DAY OF JANUARY 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of:-

Mr Lawrence Karanja holding brief for Mr. Kibet for plaintiff/applicant.

Mr Okeke present for defendants/ respondents.

Emmanuel Maelo : Court Assistant

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU