



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI AT NAIROBI

FAMILY DIVISION

HIGH COURT SUCCESSION CAUSE NO.2206 OF 2009

IN THE MATTER OF THE ESTATE OF PETER NJOROGI GACHIE (DECEASED)

GEOFFREY KOMU MUNGAI.....APPLICANT

VERSUS

NANCY WAITHERA.....1ST RESPONDENT

PETER GATHIGI.....2ND RESPONDENT

RULING

1. Geoffrey Komu Mungai, the applicant, who is not related to the late Peter Njoroge Gachie, (the deceased in this cause)applied to this Court on 15th October 2009 by way of summons for revocation of Grant seeking orders that:-

1. ***The proceedings in Kiambu Succession Cause No.175 of 2007 (in the matter of the Estate of Peter Njoroge Gachie) be stayed pending determination of the application and***
2. ***that the grant of letters of administration made to Nancy Waithira and Peter Gathigi (in Kiambu Succession Cause No.175 of 2007) be annulled and/or revoked and (3) that costs of the application be provided for.***

2. The application was supported by the affidavit of the applicant sworn on 14th October 2009. The grounds on which the application was made included the statement that the applicant was a purchaser (of 0.10 of a hectare comprised in the land title No.Kiambaa/Waguthu/1578 which forms part of the Estate of Peter Njoroge Gachie, deceased, which is the subject of Kiambu Succession Cause No.175 of 2007) and further that the applicant did not participate in the application for the grant of the Letters of Administration in the said cause as a result of which his interest as a purchaser was not considered.

3. Peter Gathigi Gachie, a co-administrator of the Estate of Peter Njoroge Gachie, deceased, in the said Succession Cause (No.175 of 2007) swore an affidavit in reply on 30th October 2009 and denied the allegations of the alleged sale (of 0.10 of hectare) to the applicant. In particular he averred that the award of ¼ of an acre (or 0.10 of a hectare) comprised land Title No.Kiambaa/Waguthi/1578 to the applicant by Provincial Land Disputes Tribunal in its decision dated 4th November 1999 was quashed by this Court (P.J. Ransley J.) in H.C. Civil Appeal No.13 of 2002 (Peter Njoroge Gachie versus Geoffrey Komu Mungai) in a judgment dated 20th November 2003 which the applicant did not appeal against. The contention by the respondent is that the applicant cannot now revive the matter through an application for revocation of Grant as the issue as to whether he is entitled was determined in the said judgment.

4. Mr. Geoffrey Komu Mungai, the applicant who appeared in person, urged the court to allow the application and grant the orders sought in his application. He relied on the application and the supporting affidavit and the documents annexed to it.

Mr. Gachoka, the learned counsel for the respondent, relying on the respondent's replying affidavit urged the Court to dismiss the application as lacking any merit.

6. I have perused the application and the replying affidavit. I have also duly considered the submissions by the applicant who appeared in person and by Mr. Gachoka, learned counsel for the respondent.

7. Peter Njoroge Gachie, deceased, died at Kiambu District Hospital domiciled in Kenya on 13th July 2006. He left an estate which included land Parcel No.Kiambaa/Waguthu/1578. He was survived by a sister and two adult children, namely Gachie Njoroge and Nyakio whose mother, Wanjiru Njoroge (widow) passed on. In an effort to enforce the sale by the deceased to him of 0.10 of a hectare comprised in the said title, the applicant instituted in Kiambu Civil Suit No. RMCC No. 13 of 1999 which was dismissed.

8. The Estate of the deceased was subsequently distributed in accordance with the Certificate of Confirmation of the Grant dated 15th October 2009 issued by the Senior Principal Magistrate at Kiambu in Succession Case No.175 of 2007 which shows that the applicant was not included as an heir or beneficiary or creditor of the estate.

9. The deceased died intestate. The applicant is not related to the deceased in any way. The applicant was not a creditor. He was not entitled to apply for the Grant of Letters of administration in the deceased's estate. His interest in the estate was pegged on his claim that he had bought 0.10 of a hectare comprised in land title No Kiambaa/Wagutha/1578 which was part of the deceased's estate. The dispute relating to the applicant's purchase of this portion of land was heard and determined by the Land Disputes Tribunal pursuant to the provisions of the The Land Disputes Tribunals Act (No.18 of 1990) whose appeals Committee decision was nullified by this Court (P. J. Ransley J.) as aforesaid. The effect of this Court's decision is that the decree of the court below endorsing the award of the Appeal's Committee as an order of the Court was nullified and ceased therefore to have any legal force or effect.

10. It seems that pending the hearing and determination of the instant application this Court issued

interim orders staying the orders issued in the said succession cause by the subordinate court contained in the certificate of the confirmation of the grant. Contrary to the order for stay by this court, the certificate of confirmation of the Grant was registered ostensibly at the behest of the administrators of the estate and the estate passed onto the beneficiaries before the outcome of the instant application. Consequently, on 16th October 2011, this Court (Kimaru J.) declared that Nancy Waithira and Peter Gathigi, the two administrators of the estate of Peter Njoroge Gachie, deceased, had deliberately disobeyed the order for stay. The Court (Kimaru J.) proceeded to order cancellation of the entries effecting registration of the beneficiaries to the title, No. Kiambaa/Waguthu/1578 and restoration of the title to in the name of the deceased until the instant application is heard and determined.

11. I have carefully examined the application by Geoffrey Komu Mungai. It is my finding that he has no legitimate claim to the estate of the deceased and is not entitled to be registered as an heir or as a purchaser. His claim has no merit. If the sale to him by the deceased of 0.10 of a hectare in title No.Kiambaa/Waguthu/1578 had received the blessing of the Land Consent Board consent pursuant to the provisions of the Land Control Act, he probably might have been able to enforce the contract against the deceased or the administrators of the Estate of the deceased by seeking specific performance. But the record does not show existence of such consent. The absence of such consent rendered the alleged sale null and void. At any rate, the contract of sale having been made in 1993, the period within which it could be enforced has elapsed. Litigation must have an end and this Court in its judgment (P. J. Ransley J.) dated 20th November 2003 found the decision of the Land Appeals Committee and the decree issued pursuant to it was null and void for want of jurisdiction. As there is no basis on which the applicant can legitimately claim to be entitled to the portion of 0.10 of a hectare comprised in the land title No.Kiambaa/Waguthu/1578 which is comprised in the estate of the deceased, the certificate of the Confirmation of the Grant dated 15th October 2009 issued by the Senior Principal Magistrate at Kiambu in Succession Cause No.175 of 2007 ought to be registered.

12. Accordingly, the application by Geoffrey Komu Mungai, the applicant, dated 14th October 2009 seeking revocation or annulment of the Grant issued in the Estate of Peter Njoroge Gachie, deceased, to Nancy Waithira and Peter Gathigi is hereby dismissed with costs for want of merit. Costs of the application shall be paid by the applicant, Geoffrey Komu Mungai, to the respondents, Nancy Wachira and Peter Gathigi the administrators of the estate of the deceased.

13. The Certificate of Confirmation of the Grant dated 15th October 2009 issued by the Senior Principal Magistrate at Kiambu in Succession Cause No.175 of 2007 shall be registered forthwith. It is so ordered.

G. B. M. KARIUKI, SC

JUDGE

Dated and delivered at Milimani Law Courts, Nairobi, on this 19th day of December, 2014 by the

Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.

JUDGE

COUNSEL APPEARING

Mr. Kanyoni Gachoka Advocate, of Gachoka & Co. Advocates for Petitioner Mr. Geoffrey Komu Mungai Applicant

Court Clerk - Mr. Wahinya Kugwa



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