



IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 1136 OF 2013

(FORMERLY NAIROBI HC SUCCESSION CAUSE NO 3112 OF 2012)

IN THE MATTER OF THE ESTATE OF MWANGI GIKONYO, DECEASED

MARGARET WAIRIMU KINUTHIA.....APPLICANT

VERSUS

ESTHER WAITHIRA GIKONYO

ALICE WANJA KARIUKI.....RESPONDENTS

R U L I N G

1. The Deceased in this cause is **Mwangi Gikonyo**. A grant of letters of administration intestate to his estate was made and issued on 24/08/2010 to **Esther Waithira Mwangi** (1st Respondent) vide ***Kigumo PM Succession Cause No 67 of 2009***. The grant was subsequently confirmed and a certificate of confirmation issued.

2. By a **summons dated 31/12/2012** the Applicant, **Margaret Waithira Mwangi** applied for revocation of the grant upon the usual statutory grounds under **section 76** of the ***Law of Succession Act, Cap 160*** and **Rules 44** and **47** of the ***Probate and Administration Rules*** made thereunder. The specific complaint of the Applicant is that she has a purchaser's interest in the estate of the Deceased in that on 15/10/2002 she bought from the Deceased land parcel L. R. LOC 2/MARIRA/2290 for a consideration of KShs 380,000/00; that she paid KShs 180,000/00, with the balance of KShs.200,000/00 to be paid "after obtaining Land Control Board consent"; that she took possession of the land as per the terms of the written sale agreement; that the 1st Respondent then instituted proceedings over the land against the Deceased in a Land Dispute Tribunal; that after the Deceased's death the 1st Respondent instituted the succession proceedings through which she obtained grant and confirmation thereof; and that thereafter the 1st Respondent sold the aforesaid parcel of land which constituted the estate of the Deceased to the 2nd Respondent.

3. The Respondents opposed the summons for revocation by a joint replying affidavit sworn on 14th and filed on 16th January 2013.

4. The Respondents subsequently raised a preliminary objection to the summons for revocation of grant by a notice dated 01/02/2017. The points of law raised are as follows –

(a) That the summons for revocation does not lie in law in that the Applicant's purchaser's interest can only be determined in a civil, not a succession, court.

(b) That in any event the Applicant has no *locus standi* in that her purchaser's interest has not yet

crystallized.

5. It was agreed that the preliminary objection be canvassed by way of written submissions. The Respondents filed their submissions on 19/05/2017 while the Applicant filed hers on 23/05/2017. I have considered those submissions, including the cases cited, particularly the ***Court of Appeal*** decision in ***Musa Nyaribari Gekone & 2 others -vs- Peter Miyiinda & Another [2015] eKLR***.

6. There is no doubt that the Applicant is an interested party within the meaning of **section 76** of the ***Law of Succession Act*** who legitimately applied for revocation of grant. But there is also no doubt that her interest is based upon a sale agreement in respect to land between her and the Deceased. The land appears to be one of the two assets of the Deceased's estate. She appears to have taken possession of the land under the terms of the written sale agreement between them. But the Applicant herself has in her supporting affidavit raised the issue of land control consent, which apparently had not been obtained by the time the Deceased died. It is apparent that the Deceased died before completion of the sale transaction between him and the Applicant.

7. The important question here of course is whether a succession court is sufficiently equipped to adjudicate a claim based on a contract of sale of land, trusts and such? Put another way, can a succession court enforce a contract of sale of land or a claim of land based on trusts, etc.?

8. Succession proceedings are very limited in nature and scope. The court is mandated only to determine the persons beneficially entitled to a deceased person's estate and their respective shares therein. Where an interested person's interest in the estate is based on a contract of sale, or trusts, the succession court would not have the benefit of proper pleadings, etc. Further, to embark on determination of such claims, the succession court might have to ignore express laws, such as those relating to limitation, land control, etc. In my view, contested claims in a deceased person's estate that are based on contracts of sale, trusts etc. belong in civil court, not in a succession court. A civil court will have the benefit of proper pleadings, discovery, etc. which a succession court will not have.

9. In the present case, I consider that the ends of justice will be best served by affording the Applicant a reasonable opportunity to pursue her claim in civil court. So, I will not dismiss her summons for revocation of grant for now. I shall grant her sixty (60) days at the end of which she should demonstrate that she has instituted appropriate proceedings in an appropriate court to enforce her contract of sale of land.

10. Let this matter be mentioned on a date to be taken for further directions. Such directions may include an order for dismissal of the summons for revocation of grant. Costs shall abide final orders. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 5TH DAY OF OCTOBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 13TH DAY OF OCTOBER 2017