



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 142 OF 2006

IN THE MATTER OF THE ESTATE OF NDUNGU MWANGI KAMAU (DECEASED)

TERESIA WANJIKU KIRAGU.....APPLICANT/OBJECTOR

JECINTA WAMBUI NDUNGU.....RESPONDENT

RULING

1. This is a ruling on application dated 17th September 2020 filed by the objector herein seeking to revoke and/or alter letters of Administration Grant to Jecinta Wambui on 29th February 2016 and confirmed on 20th February 2017.
2. Grounds on the face of the application are that the respondent fraudulently filed the petition for grant of letters of administration intestate by making false statement and concealment of material facts from this Honorable Court; and further that the acts of the respondent prove that she does not have the interest of the estate at heart and up to some mischief; that the applicant stand to suffer irreparable loss if the application is not allowed.
3. The application is supported by affidavit sworn by the applicant sworn on 17th September 2020. She averred that she the *bonafide* purchaser, transferee, and registered owner of property title number Nyandarua/Mawingo/1017 which she attached to the affidavit.
4. She averred that she purchased the said property on 24th December 2003 and has been in occupation since then. He attached sale agreement.
5. The applicant further averred that after the demise of the deceased herein, his brother Peter Konde forcefully buried the deceased in the land and his efforts to stop the said burial were futile as he was chased by angry mourners.
6. He averred that the said property ought not to have been included as an asset in the estate of the deceased and should be removed; that the respondent failed to disclose his interest when applying for grant of letters of administration or when seeking confirmation; that inclusion of property in the assets of the deceased was in bad faith and driven by malice and fraud.
7. The respondents failed to file response to this application nor submissions.

APPLICANT'S SUBMISSIONS

8. The applicant restated averments already captured above and cited the case of **Musa Nyaribari Gekone & 2 Others Vs Peter Miyienda & Another [2015] eKLR**. Where the Court held that the respondent should have disclosed that the applicant had an interest in the property while applying for letters of administration or when seeking confirmation as the applicant paid part of the purchase price to the deceased and the balance to the mother, subsequent upon the death of the deceased.
9. And further the case of Re-Estate of **Annah Chepkurui Mutua (Deceased) [2019] eKLR** where the Court found that there was non-disclosure of material facts.
10. The applicant submitted that the grant was concluded and confirmed through fraud and non-disclosure of the applicant's/objector's interest.

ANALYSIS AND DETERMINATION

11. I note from title deed attached to the affidavit that it was issued to the applicant on 28th October 2010. The land sale agreement is dated

24th December 2003 and agreement for further payment is dated 22nd June 2004. Record show that the deceased died on 19th July 2005.

12. The respondent failed to file response to controvert the applicant's averments. Explanation for including the property herein in the list of the deceased's assets has not been given.

13. The attachments suggest transaction involving the land herein between the deceased in the year 2003, two years before the death of the deceased. This calls for need to involve the applicant in this proceeding to assist the Court establish whether the property herein should form part of the estate of the deceased. The applicant which should have been brought to the attention of the Court. There is need to establish the interest of the applicant.

14. FINAL ORDERS

1. Grant of letters of Administration issued on 29th February 2016 and confirmed on 20th February 2017 is hereby revoked.

2. Cost of this application to abide by the outcome of this succession cause.

RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 29TH DAY OF APRIL, 2021

.....

RACHEL NGETICH

JUDGE

In the presence of:

Schola - Court Assistant

Mr. Musili Counsel for Applicant/objector

Respondent in person absent