

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 266 OF 1994

IN THE MATTER OF THE ESTATE OF MAMIRA SESI (DECEASED)

RULING

1. This cause is on the estate of Mamira Sesi, who died on 6th March 1973. He was said to have been survived by four children, being Mudashi Mamira, John Asirikwa Mamira, Joel Shivega Mamira and Hezeron Osava Mamira. Representation to his estate was granted to Mutashi Mamira, on 22nd December 1994, and a grant of letters of administration intestate was duly issued to him, dated 15th April 2003. The record before me is in a rather sorry state, but I deduce that the said grant was confirmed on 21st February 2012, on an application dated 21st January 2004. A certificate of confirmation of grant, dated 21st February 2012, was subsequently issued.
2. On 23rd January 2017, a summons, of even date, was lodged herein, seeking amendment of the certificate of confirmation of grant, to include Kakamega/Cheptulu/66, and to have the said parcel of land devolved upon Andrea Mutashi Mamira. A consent was lodged on the record, on 13th October 2020, dated 2nd March 2020, executed by three individuals, in which Kakamega/Cheptulu/66 was to be shared at diverse proportions between the administrator and three others, and Kakamega/Tiriki/Cheptulu/5 was to devolve wholly upon the administrator.
3. An affidavit of protest was then placed on record, by one of the persons who had signed the consent to mode of distribution dated, 2nd March 2020, Patrick Sagwa Kadukha, sworn on 13th October 2020. He claims to have had bought a portion of Kakamega/Cheptulu/66, and had been assured that his interest would be processed through these proceedings, yet in the application dated 23rd January 2017, the administrator sought to have the entire Kakamega/Cheptulu/66 devolved upon himself.
4. The affidavit of protest provoked the filing of a notice of preliminary objection, on 1st December 2020, dated 2020, by the administrator. He argues that the protestor was not a creditor or beneficiary of the estate of the deceased, that his claim did not lie against the estate and was outside the jurisdiction of the court, and the protest was an abuse of the process of court.
5. The preliminary point of law was argued on 21st December 2020. Mr. Chitwa submitted that the protestor had no capacity to intervene in the matter given that he was not a creditor of the estate, for he did not purchase the subject property from the deceased, asserting that anything done after the demise of the deceased contravened section 45 of the Law of Succession Act, Cap 160, Laws of Kenya. The protestor submitted that he did not buy the land from the deceased, but from Pius Muheria, adding that the deceased died before he, the protestor, had capacity to buy land.
6. The creditors that are recognized as having valid claims against the estate of a dead person are those who transacted with the deceased. Their claims would be treated in law as surviving the death of the deceased, and would be enforceable against the estate. The protestor admitted, when he addressed the court on 2nd December 2021, that he did not buy the land he was claiming from the deceased. Indeed, he said, he had not attained majority age, as at the date the deceased died, and therefore, he had no capacity to transact with him. That would mean that the protestor was not a creditor of the estate of the deceased, and would have no claim against the estate. He was, certainly, not a survivor of the deceased, and he was not entitled to benefit from the estate in any capacity.
7. The protestor claims to have had bought the property from a Pius Muheria. It is not clear who that individual was in relation to the estate, for he does not appear to have been one of the survivors of the deceased. To the extent that he purported to buy the property after the deceased died, and from a person other than the administrator, it would follow, by dint of section 45 of the Law of Succession Act, his conduct amounted to intermeddling with the estate of a dead person, which is an offence under that provision.
8. Secondly, section 79 of the Law of Succession Act vests the estate in the personal representatives to whom representation has been granted. It would appear that the protestor did not transact with the administrator, the person in whom the estate was vested, and who could give him a proper title to it, if he sold the same in compliance with Section 82 of the Law of Succession Act. He bought it from a fellow intermeddler. He acquired no rights whatsoever in the estate from the alleged sale, for the person who purported to sell the property to him had nothing to sell.
9. Thirdly, as the protestor was not a creditor of the estate, and, therefore, he has no claim against the estate, he can claim only against the person that he transacted with. That claim cannot be entertained in these proceedings, and he is better off initiating a separate suit against the seller of the land. The instant cause is for distribution of the estate of the deceased. It is not a land matter. In any case, the High Court has no jurisdiction to handle land disputes, where land rights acquired through sale are adjudicated. The protestor should pursue his rights at the proper forum, before the courts vested with jurisdiction.
10. I agree with Mr. Chitwa. The protest is not maintainable. Hearing it would amount to wastage of judicial time. Let the protestor move his dispute to the right forum. Consequently, the preliminary point of law raised in the notice dated 30th November 2020, is upheld. The protest stated in the affidavit of the protestor, sworn on 13th October 2020, is hereby struck out, with the consequence that the said affidavit is struck

out. There shall be no order as to costs. Any party aggrieved has leave, of twenty-eight days, to move the Court of Appeal, appropriately.

11. The estate in this matter is situated within Vihiga County, consequently, the file herein shall be transferred to the High Court of Kenya at Vihiga for finalization.

DELIVERED, DATED AND SIGNED IN CHAMBERS ELECTRONICALLY AT KAKAMEGA THIS 19TH DAY OF APRIL, 2021

W MUSYOKA

JUDGE