



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 90B OF 2016

IN THE MATTER OF THE ESTATE OF THE LATE MARY WAIRIMU KIMOTHO aka WAIRIMU KIMOTHO (DECEASED)

RULING

1. This succession has had a very chequered history. There is a comprehensive judgment delivered by *Justice W. Musyoka* on 26th October, 2016 in this matter. I would not wish to repeat the background the learned judge set out in that judgment relating to the Estate of **Mary Wairimu Kimotho alias Wairimu Kimotho** deceased. It suffices to state that the deceased passed away on 9th August, 1996. *Margaret Mwihaki Njoroge* obtained a grant of letters of administration intestate which grant was confirmed on 15th August, 2012. Following that confirmation Margaret sub-divided the deceased's estate property, namely KABETE/KIBICHIKU/205. By his afore stated judgment of *Justice W. Musyoka* that grant was revoked and the confirmed grant was cancelled. The court by that judgment found that Margaret had failed to prove her claim of trust over the property. The learned judge ordered cancellation of all the sub-divisions carried out on the strength of the confirmed grant.

2. Although Margaret filed a notice of appeal dated 1st November, 2016 that appeal does not seem to have been pursued.

3. Following the revocation of the grant and cancellation of the confirmed grant issued to Margaret, a petition for grant of letters of administration intestate was filed by **Moses Muturi Mbugua, Edward Njuguna and Hezron Kaburu Boro**. A grant was issued to the three persons on 11th February, 2019. On three persons seeking confirmation of that grant, by the summons dated 25th January, 2021, **Paul Njoroge** who describes himself as a beneficiary of this estate filed an affidavit of protest. The protest is based on his allegation that the estate property is the subject of Thika ELC Case No. 155 of 2019. Although the protestor stated there is an existing suit in Thika ELC, he failed to attach any proof to his affidavit of protest of such a case. The affidavit of protest failed the test of **Section 107** of the **Evidence Act** which provides:-

“107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

4. The protestor had a burden to prove the existence of that alleged case before ELC Court. I will however further add that the judgment of Justice W. Musyoka was very conclusive that those who obtained titles on the strength of the confirmed grant issued to Margaret did not have good title.

5. In totality, the claim made by the protestor fails. The protestor failed to discharge his burden of proof.

6. It follows therefore that the summons for confirmation of grant dated 25th January, 2019 is unopposed. The grant issued on 11th February, 2019 to **Moses Muturi Mbugua, Edward Njuguna Ngugi** and **Hezron Kaburu Boro** is hereby confirmed as sought by the summons dated 25th January, 2021.

RULING DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

CORAM:

COURT ASSISTANT: MAURICE

FOR PETITIONERS : MR. D. KIRIMI

FOR PAUL NJOROGE : NO APPEARANCE

COURT

RULING DELIVERED VIRTUALLY.

MARY KASANGO

JUDGE