



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO 83 "B" OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE MARY WAMBOI NJATHI - (DECEASED)

ABRAHAM NGUGI.....OBJECTOR/APPLICANT

VERSES

LUCY WANJIRU &3 OTHERS.....RESPONDENTS

RULING

1. By his summons dated **11th April, 2019** the Applicant prays for orders that the grant issued on the 30th January, 2019 be revoked and that the Respondents be stopped from trespassing on the Applicant's portion of the land he is currently occupying. The same is supported by the grounds on the face of the application and the affidavit which is undated.
2. He deponed that he purchased ½ an acre out of Land Parcel number **WAITALUK/KAPKOI BLOCK 10/KAPKOI SISAL /311** from the deceased on **25th April, 1998** for a total purchase consideration of Kshs. 60,000. He then moved on the suit parcel of land and has done extensive developments thereon without any interruption from any quota including the Respondents.
3. He stated further that he learned of the existence of this cause from his advocates and he realised that unlike the rest of the beneficiaries he was left out of the distribution. He therefore prays that the grant be revoked and that his interest be considered as he stands to suffer loss.
4. **Lucia Wanjiru Kimani** has responded vide her replying affidavit dated **23rd September, 2019** in which she states that the applicant has not exhibited any evidence of purchase of the suit land or at all and that in any case all along he was aware of this cause. She said that as a matter of fact the Applicant is married to **Nancy Wangare**, the 3rd Respondent herein whose interest has been taken care of in the grant.
5. The parties were then ordered to file written submissions which the court has gladly perused and does not intent to reproduce the same here for want of time.
6. This application is disallowed for the simple reason that there is no evidence that the Applicant purchased the suit property from the deceased. There are no annexures contained in the supporting affidavit despite the respondents raising the same in the replying affidavit.
7. There is no evidence that the parcel of land was ever transferred to the Applicant thus benefiting from the protection accorded to innocent purchasers provided under Section 93 of the Law of Succession Act Cap 160 Laws of Kenya which he sought to rely on.
8. Finally, there is no evidence shown to this court that the Applicant has been in occupation of the suit land uninterrupted over the years. The Applicant was quiet on the allegation that he was married to the 3rd Respondent whose interest in fact had been taken care of.
9. In the premises, this application is dismissed with costs to the Respondents.

Dated, signed and delivered in open court at Kitale this 25th day of February, 2020.

.....
H. K. CHEMITEI

JUDGE

25/2/2020

In the presence of:-

Wanyonyi for the 1st Petitioner

Ngeywa for Oburu for the Applicant

Court Assistant – Kirong

Ruling read in open court.