



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 18 OF 1993

IN THE MATTER OF THE ESTATE OF OMARI FWAYIA (DECEASED)

AND

ADIJA ALI MUNYASIA (suing as the

personal representative of the estate of

ALI MUNYASIA WASHIALI).....OBJECTOR/APPLICANT

VERSUS

KASSIM RASHID LUKHANDA (suing as the

personal representative of the estate of

ALIMA OMARI WASHIALI).....PETITIONER/RESPONDENT

RULING

1. The Objector/applicant, Adija Ali Munyasia, has filed an application dated 10th March, 2015 in which she is seeking for orders that:-

1. Spent

2. That the Honourable court be pleased to cancel all other titles being titles numbers South Wanga/Ekero/1924-1966 emanating from the subdivision of parcel No. South Wanga/Ekero/478 pending the hearing and determination of this application.

3. That upon the grant of prayer number two herein, this Honourable court be pleased to order that title number South Wanga/Ekero/478 reverts back to the names of the deceased herein OMARI FWAYIA pending redistribution of the estate herein.

4. That costs be provided for.

2. The application was filed following the ruling of **Sitati J.** dated 30th December, 2014 in which the learned judge revoked the grant of letters of administration issued to the initial petitioner in this Succession Cause, Halima Omari Washiali (now deceased) after finding that the said Halima Omari Washiali had fraudulently obtained the grant of letters of administration to the estate of the deceased herein without disclosing to the court that the deceased had other heirs apart from herself. Upon confirmation of the grant the said Halima Omari Washiali had transferred the deceased's estate in land parcel South Wanga/Ekero/478 to herself and sub-divided it into Plot Nos. South Wanga/Ekero/1924-1966 and proceeded to sell some of them. On revoking the grant the judge ordered a joint grant to be issued in the names of the objector/applicant, Adija Munyasia, and the petitioner/respondent herein (who substituted Halima Omari after her death). It is after the issuance of those orders that the objector/applicant filed the instant application.

3. It is not in dispute that the objector/applicant is a wife to the late Ali Munyasia Washiali (who was the initial objector in these succession proceedings before he passed on) and who was a brother to the late Halima Omari Washiali. The father to the two who is the deceased in

these succession proceedings left behind land parcel No. South Wanga/Ekero/478. The objector/applicant contends that the family of Ali Munyasia Washiali was entitled to inherit part of land parcel No. South Wanga/Ekero/478. That the fraud by the late Halima Washiali by transferring the land solely to herself disinherited the family of her late husband Ali Munyasia Washiali. It is on this basis that the objector/applicant is seeking for the cancellation of the resultant title deeds. She contends that since the grant upon which land parcel No. South Wanga/Ekero/478 was sub-divided has been revoked the subdivided portions cannot stand. That the persons who have acquired title from the illegal sub-division of the deceased's estate should seek for indemnity from the estate of Halima Omar Washiali.

4. It is not in dispute that after Halima died the petitioner/respondent herein and 2 others filed succession cause No. 319 of 2003 at Kisumu Law Courts in respect to the estate of the said Halima wherein an order was made for her estate comprising of land parcels South Wanga/Ekero/1924-1966 to transmit to the respondent herein together with his co-petitioners and other people. The petitioner/respondent states in his replying affidavit dated 15th September, 2015 that 13 of the plots arising from the sub-division of L.R. 478 have been sold. That those people are holding legal title documents to the suit land and are not parties in this succession cause. That the orders sought if granted will condemn them unheard.

5. The objector/applicant admits that the estate of the deceased herein has changed title to other people. Those people except the petitioner/respondent are not parties to these succession proceedings.

6. In view of the above it is apparent that if the orders sought are granted, they will prejudice persons who are not parties to these succession proceedings without giving them an opportunity to be heard. The rules of natural justice require that a person should not be condemned unheard. The objector/applicant should therefore have enjoined all the owners of the resultant parcels of land as interested parties in the application.

7. In the premises I decline to consider the instant application until after the interested parties have been given an opportunity to be heard. The objector/applicant is therefore ordered to serve the application dated 10th March, 2015 on all the interested parties and for the application to be re-heard in the presence of the said people.

Orders accordingly.

Delivered, dated and signed in open court at Kakamega this 30th day of April, 2019.

J. NJAGI

JUDGE

In the presence of:

No appearance for petitioner/respondent

No appearance for objector/applicant

Parties:

Petitioner/respondent - absent

Objector/applicant - absent

Court Assistant - George