



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC P&A NO. 20 OF 2017

IN THE MATTER OF THE ESTATE OF MUSAU MAUNDU Alias MUSAU MAUNDU YUMBYA (DECEASED)

GRACE KAVINI MUSAU.....ADMINISTRATOR

-VERSUS-

JOSEPHINE KAVOO NYANGHA 5 OTHERS.....PROTESTORS

RULING

1. By Summons dated 27/11/2018 the Applicant seek orders that the court's Ruling on distribution dated 30/07/2018 and all consequential orders be stayed pending hearing and determination of the instant summons and same Ruling of 30/07/2018 be set aside or varied and Applicant be granted leave to lodge protest *inter alia*.
2. The Application is premised on the provisions of Article 40, 50(1) and 159 (2d) Constitution of Kenya, Section 47 LSA Cap 160 *inter alia*.
3. The same Application is based on grounds that the Applicant had bought a portion of suit land UKIA/UTAATI/1176 from the deceased but unfortunately he passed on before he could transfer same to him (Applicant).
4. He claims to be in active possession of the portion he bought from suit land. He confirms that during the hearing of the protest which led to the Order/Ruling of 30/07/2018 he testified as a witness and produced an agreement to show he had bought a portion of suit land though he had no protest of his own.
5. He says that due to lack of knowledge of procedure and error he produced an agreement in Kikamba language without translation.
6. Now he avers that his decision is to file protest to claim the portion he bought. He is fearful that the estate may be distributed before he gets his portion of land.
7. The Applicant has also sworn an Affidavit on 27/11/2018 which reiterates the above grounds. The Application is opposed by Dickson Mwanja Musau via Affidavit he swore on 06/02/2019.
8. In a nutshell the Respondent the 3rd Protestor avers that the issue was determined vide paragraph 34 – 44 of the Ruling thus court *functus officio*.
9. In any event the Applicant was all aware of the matter and he even testified as a witness thus he squandered the opportunity to lodge his protest.
10. This court has read the Ruling of 30/07/2018 and particularly para. 34 – 44 and clearly finds that the matter *is res judicata*. A finding was already made in respect of the alleged sale of suit land. The court even stipulated the buyer's recourse therein.
11. This court thus cannot re-hear a protest as suggested by the Applicant and thus makes the following orders;

(i) The Application is incompetent and thus struck out.

(ii) No orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKUENI THIS 31ST DAY OF MAY, 2019.

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C. KARIUKI

JUDGE