



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 18 OF 2001

IN THE MATTER OF ESTATE OF STEPHEN KIRIMA SILAS (DECEASED)

GRACE CATHERINE NTINYARI.....1ST OBJECTOR/APPLICANT

LILLIAN KARIMI STEPHEN.....2ND OBJECTOR/APPLICANT

ROSELINE MAKENA MUTWIRI.....3RD OBJECTOR/APPLICANT

MERCY KAIRUTHI KIRIMA.....4TH OBJECTOR/APPLICANT

VRESUS

MURITHI R.M.W.....PETITIONER

RULING

Application dated 11th March 2019 was brought under certificate of urgency seeking that the court issues orders revoking the grant of letters of Administration issued to the Petitioner Murithi K. M. W. Stephen on the 20th day of April 2001 and confirmed on 3rd day of July 2002

That the court be pleased to grant orders of inhibition on parcels of Land No. Nyaki/Giaki/2648, Nyaki/Giaki/2650 and Nyaki/Gaiki 2663 and 2664 which are 8 resultant subdivisions of LR Nyaki/Giaki/1759 pending the hearing of the application interpartes.

Applicant Grace Catherine Ntinyari relied on the grounds on the face of the application as well as supporting affidavit sworn by her on 11th March 2019 to the effect that the applicants were daughters of the deceased and sisters to the petitioner. That the petitioner secretly petitioned for Letters of Administration without involving them and never sought their consent before filing cause or in the distribution of the estate as beneficiaries.

That they were disinherited when the petitioner distributed the estate to himself, one brother and one sister.

That the petitioner filed cause fraudulently and concealed material facts relevant to the cause.

At paragraph 3 Grace Ntinyari gave a list of the deceased persons children. At paragraph 8 it is averred that one acre given to Roselyn Makena was actually sold to her husband by the deceased as per annexure GNC 1.

That applicant and her sisters discovered petitioner had filed succession cause when they found he was constructing on the land parcel and had sold the same to strangers to their detriment. Certificate of search annexed as GNC 3(a) (b) (c) and (d) showed that LR Nos Nyaki/Giaki/2650, 2664, 2648, and 2663 were registered in the names of petitioners, Erick Kimathi Kirima, Roseline B. B. Makena Kentuiri and Shadrack Koome M'Nchebere.

The grant was confirmed on 1st July 2002 when the judge recorded that petitioner/applicant was present in person together with 2 other beneficiaries.

The Respondent/Administrator opposed the application vide Replying affidavit sworn on 17th May 2019. The Respondent admitted that applicant/Objectors are his sisters but allegations that they were not involved in the cause were untrue and misleading as they attended court sessions especially the ones leading to confirmation.

That the objectors were listed as survivors to the estate and allegations of non-disclosure were baseless. He said the 3rd objector was among the beneficiaries and that indicated that applicants were aware of the cause.

He averred that confirmation was done in accordance with the Law of Succession Act under the Repealed Constitution whereby distribution of property was in accordance to the customary law before the promulgation of the constitution of Kenya 2010. It was also averred that under the Meru Customary Laws married women were not entitled to inherit property and it is on this basis that Objectors were not bequeathed any land.

It was averred that confirmation of grant and subsequent distribution of the estate was done in accordance with the repealed constitution and it is trite principle that law cannot be applied retrospectively.

The Respondent further averred that application for revocation has been overtaken by events as distribution of assets was completed and the estate has no remaining property for distribution and that his duties as Administrator have been completed

It was also averred that this court lacks jurisdiction to hear the matter as the land in question has already been subdivided and sold to 3rd parties and issue for determination is ownership which should be handled in Environment and Land Court.

It was averred further that applicants were aware of distribution as 3rd parties purchasers have already developed the properties and the instant application is an afterthought.

Respondent also contented that he was not aware that deceased sold land to 3rd applicants husband and that the one acre given to 3rd objector was an inheritance which she had already sold. Respondent sought that application be dismissed as the Objectors slept on their rights, real or perceived and if application is allowed it will gravely prejudice 3rd parties.

Respondent also filed a Notice of Preliminary Objection dated 17th May 2019 saying the summons were frivolous, vexatious and otherwise an abuse of court process as the same has been overtaken by events;

That the court lacks jurisdiction to entertain the summons due to the fact that the properties in dispute have sold and transferred to 3rd parties and the court will be forced to determine issue of land ownership which is a preserve of ELC in terms of jurisdiction. The Preliminary objection sought to have application struck out.

Directions were taken that Preliminary objection be canvassed byway of written submissions. The applicants counsel in her submissions argued that Respondents Preliminary objection does not raise pure parts of law but facts. It was argued that whether property has been sold to 3rd parties is a question of fact which can only be established by evidence. It was also argued that whether Respondent had completed Administration of the estate is a question of fact which will require evidence to establish. It has also been submitted that issues raised in the application for revocation are provided under the Laws of Succession Act and not Environment and Land Act. It was argued that locking out applicants would amount to choosing strangers over the real heirs of the deceased estate.

The applicants counsel relied on the case of:-

1. RE Estate of Ndinguri Karuga [2017] eKLR
2. RE Estate of Julius Ndubi Javan (2018) eKLR and sought that Preliminary Objection be overruled.

On the other hand the Respondents counsel submitted that since the beneficiaries had subdivided their interests and sold and/or transferred the same to 3rd parties it essentially means that any question touching on the property must also consider 3rd parties interests as purchasers and that can only be done by the ELC which has jurisdiction any matters land.

The Respondents counsel urged this court to determine whether it had jurisdiction to listen to the application and if the answer is negative what the implication would be. It was argued that the estate had been subdivided and portions sold to innocent 3rd parties for value and therefore the courts jurisdiction is ousted.

Reference is made to Article 162(2) of the constitution as well as the authorities of:-

1. Manyula Dhiraylal son Vs Dukes Investments International Ltd and 2 others [2018] eKLR.
2. In the matter of Interim Independent electoral commission – constitution Application No. 2 of 2011
3. Seven Seas Technologies Ltd vs Eric Chege [2014] eKLR.
4. Owners of the Motor Vessel “ Lillian” vs Caltex Oil(K) Ltd [1989] eKLR.
5. Republic vs KaresaChengo& 2 others [2017] eKLR
6. Benjamin Leonard Macfory United Africa Co. Ltd (UK)[1962] Act 152

The Respondents counsel concluded that with support of the above authorities this court does not have jurisdiction and therefore sought the application to be struck from the submissions of the counsel o record for the parties this court finds that the preliminary Objection is misconceived as to Jurisdiction in succession matters. The subject suit land was in the name of the deceased prior to same allegedly being distributed and the Notice of Preliminary Objection is pre-emptive of the court's determination of the appl for revocation which has not been argued. Whether 3rd parties are innocent purchasers for value will be dependant upon evidence adduced by the parties as the application for revocation. The authorities relied upon have not relevance to jurisdiction in succession causes and cannot regarded. The preliminary objection is therefore overruled with costs to the Objectors/Applicants.

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 20TH JUNE 2019.

In the presence of:

C/A:

Petitioner:- Mr Mutuma holding Brief for Okatch for Petitioner

Protesters:-Ms Nelima Advocate for Applicant

HON. A.ONG'INJO

JUDGE

Ms Nelima Advocate

The Petitioner had filed Replying Affidavit to application for revocation and I pray to be given time to reply. We seek directions that application be canvassed by way of written submissions.

Mr Mutuma

We can have liberal leave to respond to supplementary/ Further Affidavit. We can also have 14 days each to file submissions. We pray for a copy of the ruling.

Order:

Mention on 25.7.2019 to confirm submissions filed. Applicants will have 14 days to respond to Replying Affidavit as well as file and serve submissions. Upon service Respondents will have 14 days to file and serve submissions.

HON. A.ONG'INJO

JUDGE