



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 254 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE JAIRO KIBIEGO KIPKURGAT - (DECEASED)

ESTHER KURGAT YEGO.....1ST PETITIONER /RESPONDENT

ANDIPAH KIPKORIR NGENY.....2ND PETITIONER/RESPONDENT

VERSES

ELKANAHA OSIRU RABWOGLI.....1ST APPLICANT/INTERESTED PARTY

JANE AKELLO ALUODO.....2ND APPLICANT/INTERESTED PARTY

RULING

1. The grant of Letters of Administration over the estate of the deceased herein was confirmed on the **9th July, 2015** and a further amendment to the grant was done on the **26th October, 2016**. The deceased died on the **5th October 2010**. In the amended grant the names of the Applicants were left out and or the share due to them was not included.
2. They were aggrieved by the action of the Respondents, the administrators of the said estate and have filed the application dated **24th November, 2016** in which they seek that their names be included in the said grant. According to them they purchased a total of half an acre from the deceased out of land parcel number **KITALE MUNICIPALITY BLOCK 15/KOITOGOS /2266** which was registered in his name.
3. As per the supporting affidavit of the 2nd Applicant they first purchased $\frac{1}{4}$ of an acre and later added another $\frac{1}{4}$ an acre making a total of $\frac{1}{2}$ an acre. They claimed that they have taken possession of the same and fully developed and thus they merit to be included in the grant.
4. The 2nd Respondent vide a replying affidavit dated 5th December, 2016 has opposed the said application arguing that they are only aware of $\frac{1}{4}$ of an acre the deceased sold to the Applicants and not a total of $\frac{1}{2}$ an acre. He said that they are willing to have the admitted $\frac{1}{4}$ acre included in the grant.
5. In his reply he has attached an acknowledgment dated **20th March, 2006** by the deceased that he had received the sum of kshs. 250,000 being the purchase consideration for $\frac{1}{4}$ of an acre.
6. This court has perused the rival submissions filed by the parties herein. In the assessment of this court, it is clear that the Respondents admit that the deceased sold $\frac{1}{4}$ of an acre to the Applicants. To that extent the grant ought to be amended to reflect that position.
7. The next $\frac{1}{4}$ is problematic and contested. There is no document to support the same and even if it was and there was contest over it, I don't think that this would be the proper court to decide. This court is limited to the extent that it has jurisdiction over deceased estate but not strictly speaking a situation over contracts of sale as is the case herein.
8. The court finds that the proper court for the parties to litigate and offer their evidence is the Environment and Land court. This court as it stands cannot adjudicate over the question of whether the deceased sold the $\frac{1}{4}$ of an acre out of the suit land or not. This needs adduction of evidence under the relevant land laws.
9. For this reason, I shall allow the Application only to the extent that the grant be amended to include the admitted $\frac{1}{4}$ of an acre. The question of the other $\frac{1}{4}$ of an acre ought to be litigated elsewhere but not in this cause.
10. Each party shall bear their respective costs,

Dated, signed and delivered in open court at Kitale this 18th day of December, 2019.

H. K. CHEMITEI

JUDGE

18/12/19

In the presence of:-

Arunga for Wafula for Applicant

No appearance for respondent

Court Assistant – Silvia

Ruling read in open court.