

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 411 OF 2015

RE ESTATE OF MWANGI MACHARIA (DECEASED)

JUDGMENT

1. The deceased died *intestate*. From the oral and documentary evidence, he was an *only child*, remained *unmarried* and had *no* other dependents.
2. The deceased was the registered owner of a parcel of land described as *Loc.15/Kangure/2363* [hereafter *the suit land*]. The land measures approximately 2.25 hectares.
3. The administrator is *Pius Wachira Mwangi*. He wears two hats: That of a *creditor* by virtue of a *sale agreement* for the suit land; and, the proposed *administrator* of the estate.
4. The cause is *not* opposed. But in view of the alleged sale, and in the interests of justice, I directed the administrator to testify *on oath*. He bought the land for KShs 50,000 on 16th October 2006. He said that he took care of the deceased who was ailing; and, that he allowed the deceased to be interred on the suit land.
5. He called one other witness, *Nicholas Maina Wachira*. In addition, there is a deposition by the administrator in support of the summons for confirmation of grant dated 8th December 2016; and, a further affidavit sworn on 10th January 2018. There is also a *verifying affidavit* by his counsel of record, *Mr. Jeremiah Mbuthia*, sworn on 11th June 2018. The latter *attested* to the sale agreement.
6. The issue for determination is whether the administrator *proved* the sale. Rule 40 (3) of the Probate and Administration Rules empowers the *succession court* to deal with the matter; or, to refer such a dispute to a civil court; in this case, the Environment and Land Court. This cause was duly *gazetted*; has *not* been contested; and, the issue of sale is fairly straightforward. I am thus well placed to determine the matter.
7. I am satisfied from the oral evidence and the sale agreement (exhibit 3) that the administrator paid valuable *consideration* for the land on 16th October 2004. The conveyance was corroborated by the deposition of counsel, *Mr. Jeremiah Mbuthia*, sworn on 11th June 2018. From the search certificate (exhibit 2) the deceased was the registered owner of the suit land. He died on 8th January 2006 before effecting the transfer.
8. I am also satisfied from the evidence of Nicholas Maina Wachira (PW2) and the letter dated 8th December 2017 from the area chief (exhibit 4) that the deceased was the *only child*, never *married* and had *no* known dependents.
9. I *allow* the *summons* dated 8th December 2016. The sole property known as *Loc.15/Kangure/2363* shall devolve *wholly* to *Pius Wachira Mwangi*.
9. The grant shall be *confirmed* in terms of this judgment.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 25th day of July 2018.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Mr. Pius Wachira Mwangi (The administrator).

Ms. Dorcas and Mr. Kiberenge, Court Clerks.