



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 660 OF 2011

IN THE MATTER OF THE ESTATE OF M MUGUONGO M' ANGENCIA CHARLES – DECEASED

RITA MWATHANA BAARIU.....PETITIONER

-V-

FRANCIS K. M'MUGUONGO & 12 OTS...APPLICANTS

-AND-

ALEX MUGAMBI & 3 OTHERS.....INTRESTED PARTY

JUDGMENT

[1] This succession cause relates to the Estate of M' Muguongo M' Angecia (deceased). On 11th June 2018, the Grant was revoked and a fresh Grant was issued to Sabina Muthoni, Janet Nanjara and Joyce Kanungu. The court further directed Janet and Sabina to file an application for Confirmation within 21 days with the other parties being given 21 days of service to file their proposed mode of distribution.

[2] On 21st November 2018, Mr. Muthomi for the Applicants requested the court for more time to file an affidavit on the alleged gifts *intervivos* and the court acceded to his request and granted him 10 days. As at the time of writing this judgment however, he had not done so.

[3] By Summons for Confirmation Grant dated 18th September 2018, the Petitioners Sabina Muthoni and Joyce Kanungu sought to distribute the estate of the deceased as follows;

a). LAND PARCEL NO. MIKINDURI/ATWANA/285 (0.80HA)

i. JOYCE KANUNGU MUGUONGO-0.66 ACRES

ii. JANET NANJARU MUGUONGO-0.66 ACRES

iii. SABINA MUTHONI-0.68 ACRES

b). LAND PARCEL NUMBER MIKINDURI/ATWANA/501

i. JOYCE KANUNGU- 1 ACRE

ii. JANET NANJARU-1 ACRE

iii. SABINA MUTHONI-3 ACRES

iv. ALEX MUGAMBI-4.80 ACRES

c). PLOT NO. ANTUAMBURI ADJUDICATION SECTION P/NO. 190

i. JOYCE KANUNGU

d). PLOT NO. 33 GATITHINE MARKET (20 by 80)

ii. SABIBA MUTHONI

e). PLOT NO. 5 KAURUNE MARKET (20 by 80)

iii. JANET NANJARU

Purchaser's interest

[4] The Interested Party herein contended that he had bought a total of 6.8 acres from the Estate of the deceased and acquired title number LR. MIKINDURI/ATWANA/501. This land was subdivided into several portions. Therefore, from the agreements, Joyce Kanungu is left with nothing in 501 whilst Janet Nanjaru and Sabina Muthoni remained with 1 acre and 2 acres respectively. Despite the Grant having been revoked, his purchase still remained valid. Section 93 of the Law of Succession Act CAP 160 of the Laws of Kenya provides as follows;

93. Validity of transfer not affected by revocation of representation

(1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act. (2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.

[5] In the instant case there was no allegation that the said transfers were illegal, irregular or that they were tainted by fraud. The Petitioners at paragraphs 11 and 12 of the affidavit in support of the Summons for Confirmation of Grant admitted that they were aware that they had sold the land to Alex Mugambi and that he should rightfully be given his parcel of land as he bought it after they did distribution. Consequently I find and hold and that the Interested Party will be protected by section 93 supra. Accordingly I find and hold that the Interested Party is entitled to 6.8 acres of the deceased estate as enumerated in paragraphs 5-7 of his replying affidavit dated 7th November 2018.

[6] Accordingly, the estate of the deceased shall be distributed in accordance with paragraph 9 of the affidavit in support of Summons for Confirmation of Grant dated 18th September 2018, save for the 6.8 acres will be registered to the Interested Party. Specifically the estate shall be shared as follows:

A). Land Parcel No. Mikinduri/Atwana/285 (0.80ha)

I. Joyce Kanungu Muguongo-0.66 Acres

ii. Janet Nanjaru Muguongo-0.66 Acres

iii. Sabina Muthoni.0.68 Acres

B). Land Parcel Number Mikinduri/Atwana/501

As stated in paragraph 4 and 5 above, from the agreements of sale of land to, Alex Mugambi will get 6.8 acres in 501, Joyce Kanungu is left with nothing in 501 whilst Janet Nanjaru and Sabina Muthoni remained with 1 acre and 2 acres respectively. Thus, distribution shall be as follows:-

I. Janet Nanjaru-1 Acre

ii. Sabina Muthoni-2 Acres

Iv. Alex Mugambi 6.80 Acres

C). Plot No. Antuamburi Adjudication Section P/No. 190

I. Joyce Kanungu

D). Plot No. 33 Gatithine Market (20 By 80)

ii. Sabiba Muthoni

E). Plot No. 5 Kaurune Market (20 By 80)

iii. Janet Nanjaru

[7] This being a succession matter there will be no order as to costs.

Dated, signed and delivered in open court at Meru this 19th day of December, 2018

F. GIKONYO

JUDGE

In Presence of

M/s Kiome for petitioner

M/s Ayatah for Muthoni for Applicant

F. GIKONYO

JUDGE