



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

SUCC CAUSE NO. 3 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE KIMSON NJOROGE KAGUNYO – DECEASED

JECINTA MURINGA KAHIHIA.....APPLICANT

VERSUS

SUSAN WANJIKU NJOROGE.....RESPONDENT

RULING

1. The applicant has applied for the revocation of the confirmed grant issued to the respondent. In her summons for revocation of the grant, she has based her application on four grounds. First, the respondent obtained the confirmed grant by concealment and misrepresentation of material facts to this case. Second, she has stated that the subject land parcel number GITHUNGURI/GITHIGA/1950 was clan land in respect of which the deceased held it in trust for his brother, Joseph Kahihia Njoroge. Third, she has stated that the respondent knew that the subject land ought to have been distributed to the late Joseph Kahihia Njoroge. Finally, the applicant has stated that she is the wife of the late Joseph Kahihia Njoroge.

2. The Petitioner gave evidence in this court as PW 1. She testified that the deceased was a brother to her husband Joseph Kahihia Njoroge, who is also now late. She produced his death certificate as exhibit 1. It was her further evidence that the subject land, belonged to her father in law and that the deceased held that land in trust for her husband.

3. Furthermore, she testified that there was a family meeting, in which it was agreed that the subject land be given to the late husband of the applicant. She produced minutes as exh 2, which confirmed that the deceased herein held the land in trust for her late husband, Joseph Kahihia Njoroge.

4. It was also her evidence that she has been living on the suit land, on which she has put up a residential house and a store. In this regard, she produced photographs of the residential house and store as exhibit 4 (a), (b), (c) and (d).

5. Finally, she testified that the respondents concealed the above material fact and had herself registered as the owner of the suit land.

6. In the light of the foregoing evidence and the applicable law, I find the following to be the issues for determination.

1. Whether or not the respondent concealed material facts in **Succession Cause No. 30 of 2014**
2. Whether or not the respondent obtained the registration of the subject land fraudulently
3. What are the appropriate orders to be made?

Issue 1

7. There is ample evidence that the deceased husband of the respondent held the subject land in trust for his brother Joseph Kahihia Njoroge. The minutes of the family which were put in evidence as exhibit 2 support her evidence. There is further supporting evidence in the photographs which were produced as exhibit 4(a), (b), (c) and (d). Those exhibits support her evidence that she has been in occupation of the parcel of land. In the circumstances, I find that the respondent concealed material facts from the court, when she obtained a confirmed grant in her favour.

Issue 2

8. After obtaining the confirmed grant by concealing material facts, the respondent proceeded to have the suit land registered in her name.

She knew she had no right to do so. In the circumstances, I find that she acted fraudulently.

Issue 3.

9. The upshot of the foregoing is that confirmed grant in favour of the respondent is hereby revoked. It also follows that the registration of the respondent as the owner of the parcel of land is also hereby revoked. It is hereby directed that the applicant be registered as the owner of the suit land.

10. There will be no order as to costs.

Ruling delivered in open court this 18th day of December, 2018 in the absence of both the applicant and the respondent.

J. M. Bwonwonga

Judge

18/12/2018