



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 113 OF 1997

IN THE MATTER OF THE ESTATE OF M' TUATHUKU M'MAGAI (DECEASED)

CHARITY MWORIA M'IWATHUKUPETITIONER

-VS-

CHARITY KAIRIGO.....OBJECTOR

JOHN WYCLIFFE MUREITHI.....1ST INTERESTED PARTY

MARGARET KANYUA GITUMA.....2ND INTERESTED PARTY

RULING

Standing of purchaser in succession cause

[1] A question as to the standing of the Interested Parties- a purchaser-in these proceedings has arisen. The Objector in her submissions took the view of the matter; that the Interested Parties as purchasers of the estate property have no locus standi in these proceedings. She made three significant claims. First; the Interested Parties have not proved from whom they purchased the estate property. Second; the purported agreements offend the Law of Contract Act and are forgeries; some are not signed or dated and others do not specify the parcel subject of sale. Third; the purported transactions of sale of the estate property fall foul of the Land Control Act especially sections 6 and 7 thereof. And, therefore, due to lack of relevant consent, the purported transactions are null and void. For, those reasons, she termed the interested parties to be simply busy-bodies out to complicate these proceedings.

[2] The Interested Parties urged that they purchased the parcels of land in question from the deceased. They stated that they had even been enjoined in these proceedings by consent on 8th February, 2016. Accordingly, they did not consider themselves to be strangers in these proceedings. In any event, they argued that, in the joinder application the court considered all the arguments being presented and consent was recorded. According to them, this application is intended to review the consent. And, as it does not establish fraud, it does not meet the high threshold of law for the setting aside of consent order.

DETERMINATION

[3] Upon meticulous consideration of the rival arguments of the parties and the law, I take the following view of the matter. The Interested Parties were joined in these proceedings by consent of the parties on 8th February 2016. Nonetheless, I should state here that, it is much easier to entertain third party claims in

a succession cause where the administrator acknowledges the transaction to be lawful and in order. For instance, where the administrator admits that the deceased sold part or some of the estate property and signifies willingness to complete transactions by, but which were not completed due to the death of the deceased. However, it is a different thing altogether and most itchy where the purported sale of the estate property by the deceased has been strongly disputed by the administrator and on cogent grounds such as the agreement does not comply with the provisions of the Land Control Act and the Law of Contract Act, and are therefore null and void. These arguments by the Objector constitute the real issues in controversy between the purchasers and the estate. These are not simple matters; but substantial matters touching on the propriety or otherwise of the purported sale of the estate property. Thus, a dispute on ownership of land between the estate and the purchasers which in turn invites the question: whether this is the right forum to litigate such claims. The Interested parties may have desired to litigate their claims in these proceedings. But I must remind that the law subserves legitimate expectations of a litigant and rights to be heard by a competent court of law as opposed to individual desires that a particular court should hear its case. Similarly, the greater concern of the law is to build orderly judicial scheme of courts with requisite jurisdiction to adjudicate upon disputes of varied nature. Now, therefore, isn't this a challenge of jurisdiction of the court to hear their dispute? Fathom this; the vulnerability to impeachment on the basis of article 162(2) (b) & (3) and 165(5) of the Constitution of pronouncement of the High Court on such questions! Certainly, a matter of jurisdiction is of a substantial matter; it is sufficient cause for which I may review my earlier orders herein. Accordingly, I review the orders of 8th February 2016 and hereby remove the interested parties from these proceedings. I am however aware that, subject to limitation of actions, the interested parties are at liberty to file proceedings before Environment and Land Court. And due to that recognition, it will be naïve to continue with these proceedings without giving such parties some window of opportunity to establish their claims in the right forum. In the interest of justice and on this recognition, I will stay these proceedings for six months to enable the interested parties to establish or otherwise their claim against the administrator of the estate. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd March 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Mutunga advocate for Mr. Mwenda advocate for petitioner

Mr. Mutugi advocate for interested party

Mr. Kaimbu advocate for objector

F. GIKONYO

JUDGE