



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISC CAUSE 55 OF 2015
(THIKA CM'S COURT CAUSE 53 OF 1987)

IN THE MATTER OF THE ESTATE OF KAHACHO MACHARIA
REGINA NDUTA KAHACHO.....APPLICANT

VERSUS

WAMBUI KARIRU.....RESPONDENT

RULING

PLEADINGS

The deceased Kahacho Macharia died in 1973. The Applicant represents her grandmother Esther Kahacho who filed this application but died on 11th May 2015 vide death certificate attached to the application.

By an application filed on 12th September 2013 under certificate of urgency, the Applicant sought the grant issued to Danson Kariru in **Thika Succession Cause 53 of 1987** as purchaser of 1 acre of the land that belonged to the deceased be revoked for the following reasons;

- a. The purchaser Danson Kariru (deceased) obtained grant without disclosure to the children of the deceased of obtaining a grant and did not obtain their consents to obtaining the grant.
- b. The purchaser did not cite the beneficiaries of the deceased's estate to file petition for grant of letters of administration and thereafter have the purchased part of the suit property LOC1/KIRWARA/35.
- c. The purchaser claimed that he obtained a decree in **Thika Court RMCC 277 of 1980 ESTHER KAHACHO vs DANSON KARIRU** in which he was entitled to 1 acre of the suit property. He did not disclose the true facts, that the sale was nullified following an out of court agreement where he was refunded the purchase price of KSH 6, 765/- . This is as evidenced by the production in this Court of C.K. MWIHIA ADVOCATE (THIKA) Official Receipt Number 2099, dated 21st May 1980 in the name of Esther Wanjiku Kahacho's payment of Ksh 6,765/- to the said purchaser. Attached to the official receipt is a letter dated 21st May 1980 from the Applicant's advocate Mr C.K. Mwihiia addressed to the purchaser's advocate Messrs Gitau & Company advocates
- d. The letter is referenced LOC1/KIRWARA/35- DANSON KARIRU and states as follows;

“Your Client and mine did count what was to be paid to your client and your client agreed to receive KSH 6, 765/= from my client. Please note that under the law your client would only be entitled to ksh 1,500/- and my client is willing to settle for Ksh 6,765/- in full.

The sum has been deposited with me and you may I indicate your client’s acceptance of the sum in full and final settlement. “

Despite these facts Danson Kariru (deceased) entered the parcel of land LOC1/KIRWARA/35 in March 2013 and he proceeded to subdivide the suit property.

This Court has confirmed from the Court record that the Purchaser’s widow Wambui Kariru was served with the hearing notice and she declined to accept the same. The affidavit of service was filed on 12th September 2015. The hearing proceeded *ex parte*.

This Court considered the following;

- a. Although the Respondent was served and she failed to attend Court a warrant of arrest was issued; this Court relied on the Ruling of 27th October 2010 of **Succession Cause 53 of 1987 (Thika Law Courts)** that recognized the Respondent’s late husband as *bonafide* purchaser of 1 acre of the suit property. Reading through the Ruling, the present evidence of payment of Ksh. 6, 765/- as evidenced by the receipt and letter of the Applicant’s advocate was not presented to the Trial Court.
- b. There also proceedings and decision of the District Officer and elders report of 26th April 1980 now filed in this Court annexed to the application; that tabulated the crops the purchaser claimed on the land and the land he occupied and it all totaled up to Ksh 6765/= which was paid to him and he therefore he had no claim to the suit property.
- c. Yet he failed to disclose these material facts to the Court in Thika and in this Court through his widow.
- d. In light of these new developments which were not presented before, the circumstances change. In the absence of the widow’s attendance in Court, acceptance of service and or explanation or reasons for this Court to consider, the Court orders as follows;

COURT ORDERS

1. **The grant issued in Succession Cause 53 of 1987 Thika Law Courts issued to Danson Kariru is hereby revoked forthwith under Section 76 (a) (b) & (c) of the Law of Succession Act Cap 160.**
2. **The grant was issued in contravention of Section 51 (2) (d) & (g) of the Law of Succession Act. The beneficiaries of the deceased were not disclosed; he did not inform them and obtain written consents. The Applicant’s objection and cross petition was not heard and determined first before issuance of the grant as statutorily required by section 69(2) of Law of Succession Act.**
3. **A new grant is issued to the Applicant Regina Nduta Kahacho to administer the deceased’s estate on behalf of all beneficiaries of the estate. The Administrator to carry out the statutory duty under Section 83 of Law of Succession Act and file summons for confirmation of grant within 90 days from date of Ruling. Any party who opposes the mode of distribution or anyone with a claim to the deceased’s estate to file objection to heard and determined by the Court.**
4. **The suit property LOC 1/KIRWARA/35 to be appropriated by the beneficiaries of the deceased’s estate only.**
5. **The Court issues the order of inhibition from any transfer subdivision and registration processes on the land by the Respondents, their agents and or servants.**
6. **The Ruling of 27th October 2010 is set aside in light of new evidence adduced in this Court that discloses that the purchaser had no claim to the suit property as he was refunded and compensated all his interest on the land.**

7. This Court's Ruling of 15th October 2015 is also set aside in light of new evidence adduced by the Applicant that shows that the Respondent has no legal interest in the suit property.
8. The Registrar of Lands is restrained from any transfer, subdivision and registration of any interest of the suit property by any other party other than the administrator and beneficiaries of the deceased's estate only.
9. The area OCS of the nearest Police station to supervise implementation of these orders
10. Each party is at liberty is to apply
11. Each party to bear its costs

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF FEBRUARY, 2016

M.W. MUIGAI

JUDGE

In the presence of: