



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 93 OF 2013

IN THE MATTER OF THE ESTATE OF JUDAH CHERUIYOT CHESIRE (DECEASED)

PHILIP SOGOMO A. CHERUIYOT.....1ST PETITIONER

HOSEA SOGOMO.....2ND PETITIONER

VERSUS

GRAYS JEPKEMOI KIPLAGAT.....RESPONDENT

RULING

Each petitioner in this cause filed an application for confirmation of grant. The 1st Petitioner's application is dated 7th April, 2015 while the 2nd Petitioner's application is dated 9th June, 2015.

Both applications are supported by the respective affidavits of the applicants and consents to confirmation of grants general forms are attached.

Zakayo Chepkonga Cheruiyot has filed an affidavit of protest in which he accuses Philip Sogomo Cheruiyot (1st Petitioner) of introducing one Grays Jepkemoi Kiplagat as a beneficiary to be bequeathed eight (8) acres.

He stated that he sold his share to Grays but she failed to honour the terms of the agreement. Out of Kshs.1.2 million, she only paid Kshs.1,100,000/= by little instalments which made it impossible for him to meet his financial obligations which subsequently exposed him to loss and damage. He revoked the agreement and offered to refund the money which she had refused to collect. He urges that the family court cannot enforce specific performance. He further stated that a sale agreement is null and void if the subject property belongs to a deceased and before letters of administration have been applied for and obtained.

Grays Jepkemoi Kiplagat's case is that she entered into agreement with Zakayo Cheruiyot for the sale of eight (8) acres to her at 1.2million and she paid the full purchase price. This was on 2nd August, 2012. She is therefore entitled to the share in the estate sold to her.

The protest herein turns on a point of law. The Land in question (8 acres) purportedly sold by Zakayo on 2/8/2012 forms part of the estate of Judah Cheruiyot Chesire (Deceased).

A grant of administration intestate was made to Philip Sogomo A. Cheruiyot and Hosea K. Sogomo on the 9th day of September, 2014. This was long after the purported sale by Zakayo.

Section 82(b)(ii) of the Law of Succession Act Cap 160 Laws of Kenya provides as follows:

“No immovable property shall be sold before confirmation of grant.”

It follows then that since no grant had been issued and confirmed at the time Zakayo purported to sell land to Grays and whether this sale was in the knowledge of all beneficiaries or not, the said sale was without the force of law and was a nullity.

As held in the decision of **Muriuki Musa Hassan V. Rose Kanyua Musa & 4 others**, [2014] eKLR, the purchaser who claims to have bought a portion of land from Zakayo in our instant suit ought to have investigated if Zakayo had letters of administration giving him the capacity to deal with the land. There is no way that Grays in our instant suit can be held as a creditor as she never dealt with the Deceased (Judah) before his death.

Therefore, **Section 66** of the **Law of Succession Act** cannot come to her rescue. Her only recourse is a claim against Zakayo Chepkonga Cheruiyot directly and not through the estate as any purported sale to her by Zakayo was a nullity. Obviously, Grays is also not a beneficiary.

It follows then that her inclusion among those to inherit the property in question is in error. The status of Grays claim against Zakayo (if at all) is better left to the court with the jurisdiction to deal if that ever came to be.

With the result, I proceed to confirm the grant herein in the following terms:

Noting that all the beneficiaries namely Philip Sogomo A. Cheruiyot, John Kipyegon Sogomo, Zakayo Cheruiyot, Rael Sogomo, Hosea K. Sogomo, Naphtali K. Sogomo and Milcah J. Sogomo are all children of the deceased and further noting that the mode of distribution proposed by the 1st petitioner Philip Sogomo A. Cheruiyot is only supported by himself, John Kipyegon Sogomo and Grays Jepkemoi Kiplagat who has been removed from the list of beneficiaries for reasons stated above and further noting that the mode of distribution proposed by Hosea K. Sogomo is accepted by all other beneficiaries as seen in the consent signed on 9th June, 2015 and alive to the fact that that distribution is in the eyes of the court equitable, the grant herein is confirmed in terms of paragraph 3 of the affidavit of Hosea K. Sogomo sworn on the 9th day of June, 2015.

Orders according.

Dated, Signed and Delivered at Nakuru this 16th day of March,2016.

A. K. NDUNG'U

JUDGE