



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

SUCCESSION CAUSE NO. 34 OF 2004

IN THE MATTER OF THE ESTATE OF WILSON WETOSI NGUTUKU.....DECEASED

1. ROSE NEKOYE WETOSI)

2. WATILA WETOSI).....APPLICANTS

3. FRANCIS WATILA WETOSI)

VERSUS

1. JACKSON CHELEKESI WAFULA)

2. WILSON WETOSI).....RESPONDENTS

JUDGMENT

1. Jackson Chelekesi Wanjala Wetosi petitioned for grant of letters of administration on the 17th of March, 2014 in the Estate of Wilson Wetosi Ngutuku. He gave names of 6 widows and 14 sons including himself as the beneficiaries of the Estate.

2. The only asset listed was property **L.R. No. Kimilili/Kibingei/874** whose value was given as Kshs.1,500,000/- million. No Liabilities were listed.

3. There having been no objection the grant of letters of administration intestate was issued on the 12th of July, 2004.

4. By an application dated 29th March, 2005 the Petitioner applied to have the grant confirmed. A distribution list was included where none of the widows got a share of the property. The sons were to get the following.

Richard Watila	1 Acre.
Edward Nalianya	NIL
Philip Maratani	1 Acre
Celas Lukorito	NIL
Shem Nalianya	1 Acre

Francis Mukitang'a	2 Acres
Nicodemus Ngutuku	1 Acre
Jackson C. Wanjala	5 Acres
John Sitati	1 Acre
Patrick Waliaula	NIL
Isaac Waliaula	NIL
Peter Wepukhulu	NIL
Joseph Kimakwa (Deceased)	1 Acre
Saulo Waliaula (Deceased)	1 Acre

5. Several consents were filed in support of the said application but not from all beneficiaries. They were 11 in total.

6. Based on the distribution list a confirmed grant was issued on the 11th of June, 2009.

7. By summons for revocation of grant Rose Nekoye Wetosi (Widow) Watila Wetosi (Son) and Francis Watila Ngutuku Wetosi sought to have the respondent restrained from carrying out or dealing with the subdivision of L.R No. Kimilili/Kibingei/874, the Land Registrar Bungoma he restrained from any dealings on the land, status quo be maintained and in the final analysis for the confirmed grant to be revoked on grounds that the same was obtained fraudulently without involving the applicants and other beneficiaries; signatures on the consent were false and some had no Legal capacity to such. The application was supported by the affidavit of the 3rd objector Francis Watila Ngutuku Wetosi who Re-iterated the grounds.

8. The application was objected to by the Petitioner through a replying affidavit dated 24th October, 2011 where he contended that the property had been subdivided and some transferred to the beneficial owners, he categorically denied that the signatures on the consent letters were fraudulent, he further contended that distribution was done by clan members after extensive discussions with the family of the deceased and each of the 14 sons got an acre, that the applicant moved into his portion and build a permanent house.

9. The parties agreed to adduce viva voce evidence. However at the hearing only the 1st objector and the petitioner gave evidence.

10. In the Objector's evidence although there was an allegation that the deceased left two parcels of land the objector failed to give details of the 2nd parcel of land. He however confirmed that the deceased left parcel 874. He confirmed further that he gave his share to his son one Jefferson Mukitanga whose title now reads as **Kimilili/Kibigei/4294** measuring approximately 0.4 Ha. He also confirmed that each son of the deceased got an acre. However it was his evidence that at the time of his father's death his mother had land which is now being occupied by her 3 sons, another mother Rebecca has no land and stays with her son. That another wife Elimina had been given land by the petitioner, although her son Isaac had not complaint, Emily as well stays elsewhere in a land given by the petitioner.

11. In his further evidence it came out that he was aggrieved because he was not involved in the succession proceedings and he did not sign the consent and neither did his co-objectors. He was also of the view that the process was done secretly and fraudulently.

12. On his part the petitioner also adopted his statement where he reiterated that there was a clan meeting and distribution was agreed upon on 11/10/1999. In cross examination he confirmed that 1st and 2nd Objectors consented to the distribution but the 3rd declined to sign. That all others signed save those who were minors and their mothers signed on their behalf. He also confirmed that at the clan meeting none of the objectors attended. It was his evidence that the deceased left 14½ acres one acre was distributed to each son and the remainder ½ acres made the road. That the 3rd objector bought 1 acre from Edward now deceased. The petitioner bought and/or exchange land with Celas mother Emily, Patrick Isaac's mother & Peter making all together 5 acres in his name.

13. Having considered the evidence on record the issues for consideration are;

- i) Whether the grant and eventually the confirmed grant was obtained fraudulently.
- ii) Whether all beneficiaries were involved in the process.
- iii) Whether or not to revoke the confirmed grant.

14. I will start with whether or not the consent of the beneficiaries were obtained at the 2 stages where the same are necessary. From the pleadings on record no consent was obtained by the Petitioner and filed in Court at the point of Petitioning for the grant.

15. At the point of confirmation some consents were obtained 11 in number a total of 19 signatures were required. The Petitioner explained that 2 sons were minors and 2 were deceased and the 3rd objector declined to sign. It is not clear what became of 2 others.

16. The main contention by the 3rd objector is that his consent was not obtained and he was not involved.

The 1st and 2nd objectors appended their signatures they did not appear to give evidence and their objection is lukewarm; not serious.

17. The third Objector confirms that each son got an acre. He indeed bought one from his deceased brother and on the grant his share is 2 acres, he confirms further that the Petitioner bought from other beneficiaries or exchanged with other pieces of land in other words he agrees with petitioner.

18. What is the grievance of the 3rd objector? Other than that his consent was not obtained he has no other grievance. So can this court revoke the grant and stop dealings on the land based on the above when at the end of the day the court may arrive at the same decision?

19. Despite lack of involvement of the 3rd objector in the Succession process and eventual distribution, the clan, the family and the Petitioner equitably distributed the estate and disturbing status quo several years later will not be the most reasonable thing to do.

20. In the circumstances of the case the application for revocation is hereby dismissed and all orders that were issued arising from the same are vacated.

21. Costs to the petitioner.

Dated and Delivered at Bungoma this 1st day of August 2016

ALI-ARONI

JUDGE

