



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION DIVISION
SUCCESSION CAUSE NO. 997 OF 2010
IN THE MATTER OF THE ESTATE OF MBUTHIA NJAU (DECEASED)
JOYCE WAIRIMU MBUTHIA.....ADMINISTRATRIX/APPLICANT

-versus-

NANCY WAHU MATUBIA.....RESPONDENT

R U L I N G

1. The deceased to whose Estate these proceedings relate is Mbuthia Njau who died on 15th February, 2007. Joyce Wairimu Mbuthia (hereinafter the Applicant), petitioned for Letters of administration which were issued to her on 26th February, 2011. She has filed a Summons under **section 26, 47, 79** of the **Law of Succession Act, Rule 49, 63, 73** of the Probate and Administration Rules.
2. She is seeking orders that the Registrar of Lands at Nairobi be directed to allow the firm of M/s Hawk Eye Technologies Limited to access the original transfer documents dated 11th December, 2006 in favour of Nancy Wahu Matubia (hereinafter the Respondent), Joyce Wairimu Mbuthia and Mbuthia Njau of L.R. No. Dagoretti/Riruta T.275.
3. The application is premised on grounds that land parcel No. Dagoretti/Riruta T. 275 was transferred at the time when the deceased was terminally ill from August 2006 to 15th February 2007 when he died That he could not have therefore consented to the above transaction as alleged by the Respondent. That the Applicant has never executed any documents relating to the parcel of land, or attended any Land Control Board for consent with one Nancy Wahu Matubia in which she alleged to be registered as tenant in common with the deceased.
4. The Applicant has sworn a supporting affidavit dated 17th December, 2014 in which she depones that she is the administratrix of the deceased's estate. That the deceased was the sole proprietor of Dagoretti/Riruta T.275. That upon perusal of the title documents of the deceased the Applicant discovered that the aforementioned title was registered jointly in the names of the deceased, Nancy Wahu Matubia who is her daughter and herself.
5. She avers that upon scrutiny of the transfer document, she is alleged to have signed as a transferee on the transfer forms. She denies having at any time executed a transfer and what was purported to be her signature was not under her hand. She deposes that does not remember attesting her signature in any firm of advocates. She asserts that the deceased was terminally ill and bed ridden between August, 2006 to 15th February 2007 when he died, and she would have known of any transaction that could have been

undertaken particularly during the period the deceased was under her care.

6. She contends that the subject parcel of land was to be deemed as wholly owned by the deceased or he held it as trustee for the other beneficiaries until confirmation of the grant. That she complained to the police about the fraud involved in the transfer of the parcel of land but the police refused to investigate the matter.

7. The Applicant further avers that she had appointed the firm of Hawk Eye Technologies Ltd who are handwriting experts, to investigate the alleged forgery, and they have communicated through a letter dated 24th September, 2014 to her Advocate. That the Investigators indicate that they would need to access the original transfer documents to compare ridge characteristics. The Applicant urged the court to compel the Registrar of land to allow the Firm of handwriting experts to access the original transfer documents for comparison purposes.

8. The Respondent in reply, swore an affidavit and opposed the application for reasons that the identity of Hawk Eye Technologies Limited is not known, nor are they party to this suit and neither can they be enjoined in this matter. That their qualifications and registration are suspect and only known to the Applicant and her advocates. She averred that the outcome of the report by investigators would be obvious since they are specifically recruited and paid by the Applicant and her Advocates.

9. The Respondent asserts that the issue of forgery was reported to the police by the Applicant; that she was summoned and handwriting investigations were done and found to be baseless. That hence the police could not prefer any charges and the matter was laid to rest. That different samples of their handwriting were taken and analysed and it was found to be baseless. It is therefore not true that the police failed to investigate as alleged by the Applicant.

10. The Respondent also argues that the Applicant is the one who paid for the Kenya Revenue Authority stamp duty and signed for it hence she cannot say it was a forgery. She avers that the Applicant is pretentious as the parcel of land was voluntarily transferred and cannot form part of the estate of the deceased as the Applicant purports. That the Applicant, the deceased and herself attended the board together, and at the time the deceased had strength to walk despite infirmity.

11. The Respondent further averred that the Applicant visited the board and executed the consent to transfer, a fact reflected in the minutes of the board on 6th June 2006, which fact the Applicant is trying to evade. That the Respondent bought a transfer document form and took to the Applicant, who appended her signature. The transfer form was executed by an advocate and the Respondent lodged the documents of transfer, which process delayed due to “red tape” and bureaucracy” at the lands office. That the title was ready after the death of the deceased.

12. The Respondent alleges that the medical report from Neema Health Clinic annexed herein by the Applicant amounted to forgery from a ‘backstreet quack’ whose contents are not legible and has asked that the court should disregard it. She contends that the Applicant was separated and estranged from the deceased from early 1990, and only came into the picture to look for property from Makuyu where she lived, on hearing that the deceased had died. That the Applicant claimed that she was the only and rightful beneficiary of the deceased’s estate and that no one should participate in the estate until she demised.

13. The Applicant swore a supplementary affidavit in which she reiterated her earlier averments. Further that once the application is allowed the Respondent will be at liberty to cross examine the expert on the report.

14. From the court record I note that this cause came up for confirmation of grant on 26th February, 2013 before Kimaru J. The Hon. Judge did not confirm the grant observing that not all the beneficiaries of the estate had consented to the proposed mode of distribution. The court notes that the Applicant contended that she was not the only beneficiary of the deceased’s estate, and that her actions are intended to safeguard the interest and entitlement of the other eight children who are beneficiaries of the estate

besides the Respondent.

15. The application before the court seems to belong in the realm of criminal investigations which should be left to investigative agencies since forgery is alleged. Whether or not the deceased was incapacitated at the time the land transfer is said to have been carried out is disputed, as is the allegations that the Applicant ever separated from the deceased during coverture.

16. In my view the parties opposed to the proposed mode of distribution should have filed their protest for the court to hear the arguments on each side rather than call upon the court to grant permission to strangers to access government records at the ministry.

For the foregoing reasons the application dated 17th December, 2014 is found to be without merit and is dismissed with no orders as to costs.

SIGNED DATED and DELIVERED in open court this **24th day** of **November, 2016**

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L. A. ACHODE

JUDGE

In the presence ofadvocate for the Applicant

In the presence ofadvocate for the Respondent