



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 515 OF 2009

In the matter of the Estate of WACHIORI MUBERU (Deceased)

LUCIA WANJIRA WACHIORI.....APPLICANT
VERSUS
KANINI WACHIORI.....1ST RESPONDENT
SERA WAMBUI WACHIORI.....2ND RESPONDENT

R U L I N G

The applicant Lucia Wanjira filed this application in person dated 25/7/2012 and filed the same day. The record shows she is represented by one Wangeci Munene & Co. advocate who filed summons for revocation of grant dated 28/10/2014 on her behalf. On 4/11/2014 the counsel sent another counsel one Mr. Njiru to make some clarifications to the court regarding this application. The court then issued interim orders in terms of prayer 2 pending hearing inter partes on 9/12/2014.

During the hearing, the applicant and her advocate did not attend court. The respondents counsel Maina Kagio & Co. were present in attended court. There was a replying affidavit on record and he asked the court to rely on it in determining this application. There was therefore no submissions by the counsels for the parties and the court will be guided by the affidavits of both parties in its ruling.

The main prayer in this application reads as follows:-

That this court be pleased to order a prohibitory order be placed upon LR. NO. KABARE/MIKARARA/469 until the summons for revocation/annulment is heard and determined”.

In the supporting affidavit depones that she has already filed an application for revocation of grant which has not been heard. During the distribution of the estate, she says she was disinherited of her deceased fathers estate by the respondents. The grant had been confirmed when she came on board and that the land has already been transferred. In order to avoid further transfers, she prays that a prohibitory order be issued to protect her interests.

The respondents oppose the application in their affidavits sworn on 6th and 8th December 2014. It is deponed that when the succession proceedings were being prepared by the family of the deceased, the applicant refused to attend any meeting called by the family to discuss distribution. When she failed to co-operate, her share in the estate Kabare/Mikarara/469 was given to her brother Harrison Mubiru Wachiori to hold in trust for her.

The respondents argue that there are other parcels of land LR. KABARE/MIKARARA/462 and 473

which have been transferred to other people whose proceeds were used in financing succession case and related processes. Other parcels LR. KABARE/MIKARARA/474 and 475 have been charged to Kenya Commercial Bank.

In view of the respondent's arguments, I have perused the certificate of grant. It does not conform with the claims of any of the parties in this application as to the distribution of the estate. The chief's letter dated 10/7/2009 consists of 11 beneficiaries while Form P&A5 lists 13 beneficiaries. However, this was not an issue in this application.

It is important to note that in the event that the summons for revocation are determined in favour of the applicant, all the assets of the deceased's estate are likely to be affected. This would also spread to any transaction done after the distribution. The estate may have to be distributed a fresh depending on the outcome of the summons.

However, I note the applicant in her application and summons is concerned about LR. KABARE/MUKARARA/469 which she believes was her inheritance in the said estate. The petitioner/respondents have equally agreed that the said parcel was to go to the applicant during distribution though it was not given to her. The deceased had two houses at the time of his death. The first house seem to have no problem in the shares they received. It is the applicant and her brother Harrison Mubiru Wachiori who was given the applicant's inheritance and which parcel he seems to have already been disposed of. Mr. Mubiru was given LR. KABARE/MIKARARA/469, 471 and 474.

For the above reasons and for the interest of justice, this court allows the application and orders that a prohibition issues against LR. NO.KABARE/MIKARARA/469, 471 and 474 until the summons for revocation is heard and determined. It is important to note that the prohibition against LR. 471 and 474 have been ordered by the court on its own motion to meet the interest of justice. There is no order as to costs.

It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 29TH DAY OF JANUARY, 2015.

F. MUCHEMI

J U D G E

In the presence of:-

Mr. Omenya for Wangeci Munene for applicant

Mr. Maina Kagio for 2nd respondent

1st respondent in person

F. MUCHEMI

J U D G E