



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 253 OF 2003

**IN THE MATTER OF THE ESTATE OF M'NKARICHIA M'LIMBERIA Alias NKARICHIA
M'LIMBERIA.....(DECEASED)**

JOHN NTIRIMA M'NKARICHIA.....PETITIONER

VERSUS

LEONARD KAMENCHU KAILIBI.....OBJECTOR

RULING

1. The petitioner petitioned for grant of letters of administration intestate of the deceased estate on 21/7/2003. He was issued grant of letters of administration intestate on 8th October, 2003.
2. The petitioner filed an application for confirmation of the grant on 24th July, 2006 listing all the deceased beneficiaries and the only deceased properly being L.R. Kianjai/Thau/243.
3. That before the grant could be confirmed the protestor one Leonard Kamenchu Kailibi filed a protest dated 30th May, 2013 based on the grounds inter alia; that he has an interest in part of the deceased estate and the deceased wife herein Priscilla Kaburo Nkarichia had sold 1 acre to him out of L.R. Kianjai/Thau/243 on 1/9/2000 as per sale agreement annexure 'LKKI"; that the wife of the deceased who is a beneficiary refused to transfer the land to him; that he filed Maua PMCC No. 209 of 2003 annexed and marked "LKK2"; that the petitioner filed this cause without including the protestor as a purchaser; and that court should find that he is entitled to 1 acre of L.R Kianjai/Thau/243.
4. That when the protest came up for hearing the court directed that both Counsel do make oral submissions. I have very carefully considered the protest, the submissions by both Counsel on points of law, the pleadings generally and the issue for consideration as I understand the protest is whether the protestor has a recognizable interest or claim over the deceased estate and whether his protest is merited?
5. There is no dispute that the deceased in this cause as per death certificate died on 12th August, 1974. That the grant of letters of administration of his estate were granted to the petitioner on 8th October, 2003 and that the agreement relied upon by the protestor was made on 1/9/2000 long after the deceased had died and between the deceased wife and the protestor. That the petitioner herein was not a party to the said agreement.

6. The purchaser after the deceased wife refused to effect the transfer filed **Maua PMCC N. 209 of 2003 Leonard Kamenchu Kailibi V Priscilla Kaburu M’Kairichia** in which case court ordered that the defendant (seller) do transfer 1 acre out of the Suit land LR. NO. KIANJAI/THAU/243 to the protestor or refund Kshs.37,000/-.
7. The seller of the 1 acre out of Kianjai/Thau/243 was not clothed with the necessary grant of letters of administration nor is she to date clothed with any grant of letters of administration of the deceased estate to be capable of being sued or sue on behalf of the deceased estate. She lacked capacity to enter with any contract in the name of the deceased or for the benefit of the deceased estate.
8. The purchaser did not buy any property or any interest from the deceased during his life time. He cannot qualify to be a creditor from the deceased estate. He has no interest that can be enforced against the deceased estate and as envisaged under Section 66 of the Law of Succession Act.
9. The judgment relied upon by the protestor in Maua PMCC 209 of 2009 is made by independent and competent court. The judgment can independently be exercised by that court without using a probate and Administration court for that purpose.
10. The purchaser’s claim as can be ascertained for the sale agreement and his affidavit of protest has nothing to do with the deceased estate. He has no interest against the deceased estate and as such his protest is merited.
11. The upshot is that the protest is not merited and is struck out. The petitioner is at liberty to proceed with his application for confirmation of grant.
12. The petitioner gets costs of this application as against the protestor.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF MARCH, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:

- 1. Mr. Baithabu for the protestor**
- 2. Mr. Mwenda Mwarania for the petitioner**
- 3. C/clerk Penina**

J. A. MAKAU

JUDGE