

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 875 OF 2014

(IN THE MATTER OF THE ESTATE OF JOHN MUCHIRI MURAGE, DECEASED)

BENSON MATHARA MWANGI.....APPLICANT

VERSUS

1. SARAH KUTHI KIURA

2. LEAH WAMBURA KIURA.....RESPONDENTS

R U L I N G

1. The Applicant in this cause, **BENSON MUTHARA MWANGI**, applied by summons dated 21/11/2014 for revocation of the grant of letters of administration intestate in respect of the estate of the Deceased **JOHN MUCHIRI MURAGE** issued in *Thika CM Succession Cause No 468 of 2010* on 10/03/2011 and confirmed by certificate of confirmation of grant dated 29/06/2012.

2. The Applicant states in the application that he was a creditor of the Deceased who sold to him land parcel **L.R. Gatuanyaga/Ngoliba Block 1/2899** but died 2 months after the sale before transferring the same to him. His complaint is that the succession cause was instituted at Thika whereas his place of death was Nairobi; that the Administrator/Respondent failed to make a full disclosure of the sale to the succession court; and that the Deceased had been paid the full purchase price. The summons for revocation of grant is yet to be disposed of.

3. In the meantime the Applicant has sought by **another summons also dated 21/11/2014** for orders to suspend the certificate of confirmation of grant and to preserve the aforesaid property by a temporary injunction to restrain the disposition, development, transfer or any dealing with the property pending disposal of the summons for revocation of grant. The application is opposed by the Administrators by a **replying affidavit filed on 03/12/2014**.

4. I have read the supporting and replying affidavits. I have also considered the submissions of the learned counsels appearing.

5. The purchase of the land by the Applicant from the Deceased was by a sale agreement dated 10/02/2010. It is common ground that the land sold was agricultural land and subject to the provisions of the **Land Control Act, Cap 302**. It is also common ground that no land control consent for the transaction was obtained as required by the said statute. The contract for the sale was therefore void for all purposes. See **section 6** of Cap 302 aforesaid.

6. The Applicant has not yet sued the estate of the Deceased, as he should have, for a refund of the purchase price.

7. It appears, *prima facie*, that the Applicant does not have a direct interest in the estate of the Deceased which may entitle him to be considered a beneficiary thereof. Without appearing to decide the issue, it appears to me, again *prima facie*, that a void contract of sale of land cannot be a good and proper basis for revocation of a grant upon application by a person whose proper remedy appears to be a civil action against the estate of the Deceased for recovery of the purchase price paid.

8. Now that there are legal representatives of the Deceased, the Applicant can sue them in a civil action

for recovery of the purchase price paid. But he has no good reason at all to inhibit the process of succession as he now seeks to do in the present application.

9. I find no merit in the application. The same is dismissed with costs to the Administrators/Respondents. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 19TH DAY OF MAY 2015

H. P. G. WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 22nd DAY OF MAY 2015