



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**SUCCESSION CAUSE NO. 309 OF 2001**  
**IN THE MATTER OF THE ESTATE OF M'IBARI GATUNGI (DECEASED)**

SAMUEL MUTHURI ..... PETITIONER

- V E R S U S -

JENIFFER KAJUJU ..... OBJECTOR

LOISE KITHIRA M'ANAMPIU.....INTERESTED PARTY

**JUDGMENT**

1. The Protestor herein through an affidavit of protest filed on 2<sup>nd</sup> December, 2013 objected to the proposed confirmation of the grant of the estate of the deceased; M'Ibari Gatungi claiming interest in L.R. Nkuene/Upper-Mikumbune/683 as a purchase from the petitioner's mother Jennifer Kajuju (deceased). The protestors case is that she purchased the said land through an agreement dated 23<sup>rd</sup> November 2001 at a purchase price of Kshs. 70,000/- . The agreement points out that the petitioner's mother at that time had not applied for grant of letters of administration in respect of the deceased estate herein. The protestor paid the agreed deposit and took possession of the agreed portion of land in April 2002 and has since been in occupation and has developed the said parcel of land by planting bananas, coffee, nappier grass and maize.

2. The Petitioner is through an application dated 15<sup>th</sup> July 2013 on the other hands seeks confirmation of the grant in which the interest of the protestor is not considered. The petitioner's contention is that since the protestor did not purchase the subject property from the deceased she is not entitled to any part of the deceased estate. He contends further that the protestor should wait until the vendor obtains land from the deceased estate and then she transfers the same to her or sue for the recovery of the purchase price.

3. I have very carefully considered the pleadings and counsel submissions in support and in opposition of the rival position. The issue for consideration is whether the protestors protest is merited as against the deceased estate?

4. The persons entitled to any of the deceased estate are the deceased "**dependants**" and/or "**beneficiaries**" and "**creditors**". The persons referred to as dependants are well spelled out under **S29 of the Laws of Succession Act** as follows:-

***"29(a) the wife or wives, or former wife or wives, and the children of the deceased***

*whether or not maintained by the deceased immediately prior to his death;*

*(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and*

*(c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death."*

5. The protestor does not fall under the class of dependants or beneficiaries as per section 29 of the Law of Succession Act as she purchased the land of the deceased from the deceased widow, now deceased. The deceased widow is recognized as a beneficiary by virtue of Section 29 of the Law of Succession Act. The question is; **what is the fate of the protestor who purchased the subject portion from the deceased widow who is now deceased?** The answer is found under **Section 82 (b)(ii) of the Law of Succession Act** which provides:-

*"Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-*

*to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any party of the assets vested in them as they think best:*

Provided that:-

*( ii) no immovable property shall be sold before confirmation of the grant;"*

6. In view of the aforesaid section a beneficiary and even a petitioner has no capacity to sell immovable property before confirmation of the grant. The seller herein had no grant and no grant had been confirmed in her favour when she purportedly sold the subject portion to the protestor.

7. In view of the foregoing the protestor has no basis in protesting against the confirmation of the grant. Her claim is against the vendor the widow of the deceased and she can await for distribution after which she can pursue the vendor or her estate for transfer of the land. Her claim as per counsel submissions is based on trust and as such this being a succession cause her claim can properly be addressed in a different forum.

8. The protestor's counsel has submitted that the vendor Jennifer Kajuju is deceased and she has not been substituted or replaced and that the protest dated 2<sup>nd</sup> December 2013 has not been heard and determined by the court and urged that the application for confirmation of the grant is premature. He further urged that an application dated 6<sup>th</sup> August, 2013 is still pending. I have perused the court file and I have noted indeed that the said Jennifer Kajuju (deceased) who was named as a respondent has not been substituted. The application of 15<sup>th</sup> July 2013 for confirmation of grant has not been heard. I also note the application dated 22<sup>nd</sup> August 2013 is pending. The failure to apply for the substitution of Jennifer Kajuu (deceased) may be intentional and if substitution is not filed the protestor's interest may be prejudiced as the protestor may have no one to pursue for transfer of the land or recovery of her money. In view of the foregoing I decline to confirm the grant as sought until the pending application is heard and determined or withdrawn and substitution of Jennifer Kajuju is undertaken.

9. The upshot is that I make the following orders:-

*(a) The protestor's protest is dismissed as she is not a beneficiary and/or creditor to the deceased estate.*

***(b) The application for confirmation of the grant is premature as there is a pending application and Jennifer Kajuju a beneficiary (deceased) is not yet substituted.***

***(c) Each party to bear its own costs.***

**DATED at Meru on this 26<sup>th</sup> day of June 2015.**

**J.A. MAKAU**

**JUDGE**

**26.6.2015**

**Delivered in open court in the presence of:**

Mr.Kiogora for protestor

Mr. Kimathi Kiara for petitioner

Mwenda/Penina – Court clerks.

**J.A. MAKAU**

**JUDGE**

**26.6.2015**