



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
SUCCESSION CAUSE NO. 503 OF 2006
IN THE MATTER OF THE ESTATE OF JAMES MUANGE NGUU (DECEASED)

- 1. PETER MUNYUA MWANGI**
- 2. JOSEPH WACHIRA MWANGI**
- 3. BETH WANJIRU MBURAI**
- 4. JAMES NDUGI WAKOMO**
- 5. SELA MUTHIKE MAINGI.....APPLICANTS**

versus

- 1. MUASA MUANGE**
- 2. SAMUEL MATHEKA MUANGE**
- 3. PETER MULI MUANGE**
- 4. JOHN MBITHI MUANGE.....PETITIONERS/RESPONDENTS**

And

- 1. MUICO LIMITED**
- 2. SHAMBA POA INVESTMENTS**
- 3. MURARANDIA DEVELOPMENT CO. LTD...INTERESTED PARTIES**

RULING

1. A grant of Letters of Administration intestate (grant) were issued to Muasa Mwangi, Samuel Matheka Muange, Peter Muli Muange and John Mbithi Muange in respect of the Estate of James Muange Nguu.

The petitioners/administrators through Nzei & Company Advocates filed summons for confirmation of the grant. According to paragraph 3 of the affidavit in support of the application the deceased's estate comprise of:-

- **Mavoko Town block 3/2468 (40 acres)**
- **Mavoko town block 3/2577 (20 acres)**
- **Land parcel No. 1660 – Kaewa Adjudication Section.**
- **Land Parcel No. 1770 – Kaewa Adjudication section.**

2. The grant was confirmed on the 26th October 2013. On the 21st January 2013 interested parties herein (Muico Limited, Shamba Poa Investments, Murarandia Development company Ltd) through the firm of D. M. Mutinda & company advocates filed a Notice of Motion dated 9th January 2013 seeking to be enjoined in the matter as interested parties. Further that once they are enjoined as parties herein, land parcel Mavoko Town block 3/2577 be omitted from the list of assets forming the Estate of the deceased as there is a dispute between them and the petitioners.

3. On the 26th March 2013 a preliminary objection was filed by the petitioners to the Notice of Motion dated 9th January 2012 and filed on the 21st January 2013, on the grounds that: the application is brought in contravention of the provisions of the Law of Succession Act and the Probate and Administration Rules; the applicants are not beneficiaries of the deceased's estate, therefore, cannot be enjoined as interested parties in the succession proceedings; the applicant's allegations are purely of civil/contractual nature and can only be pursued in a civil court; and that properties referred to belong to the estate of the deceased but not to the person with whom the applicants purported to transact.

4. On the 26th April 2013, Peter Munyua Mwangi, Joseph Wachira Mwangi, Beth Wanjiru Mburai, James Ndugi Wakomo and Sela Muthike Maingi through the firm of Nduva Kitonga Advocates filed an application seeking revocation of the grant so that the Estate of the deceased could be distributed afresh. All applicants swore affidavits in support of the application. Peter Munyua Mwangi stated that he purchased one (1) acre of land from Peter Muli Muange (3rd Petitioner) being part of Mavoko Town/Block 3/2468, a fact not disclosed. Joseph Wachira Mwangi deponed that he purchased the land jointly with Peter Munyua Mwangi.

5. Beth Wanjiru Mburai deponed that she purchased 2 acres of land from Samuel Matheka Muange (2nd Petitioner) and Jose Muasa Muange a beneficiary of the Estate. James Ndugi Wakomo deponed that he is the Chairman of Mwireri Njathaini Squota Project and the group purchased two (2) acres of land also from the Estate of the deceased from John Mbithi Muange alias Johnstone Mbithi Muange (4th Petitioner) Sela Muthike stated that he bought one (1) acre from John Mbithi Muange alias Johnstone Mbithi Muange (4th petitioner).

6. A notice of preliminary objection dated 12th July 2013 was filed herein on 15th July 2013 by the petitioners/administrators through the firm of Nzei & company advocates on the grounds that the summons for revocation does not disclose any ground that can form a basis for the application to be struck out; The applicants seek revocation of an "unconfirmed" grant whereas the grant made to the petitioners/administrators herein was confirmed on the 26th October 2012. The applicant (Alfred Muindi Muange Nguu) is named in the petition and summons for confirmation of the grant as one of the beneficiaries therefore was not excluded.

7. On the 6th January 2011 the firm of R. M. Matata and Co. Advocates filed a Notice of Appointment. They represent Joseph Mutuota Muturi an interested party. On the 10th March 2014 the firm of J. N. Kamau representing other interested parties Samuel Macharia and Friends alliance Self Help Group also entered appearance. The firm of B. M. Mungata and Co. Advocates were also on record representing interested parties – Muico Limited, Shamba Poa Investments and Murarandia Development Company Ltd. All interested parties are persons who purchased land from the petitioners/administrators herein.

8. The applications were canvassed by way of written submissions. Submissions on record were filed by

Nzei & company advocates, Nduva Kitonga advocates and B. M. Mungata advocates which I have taken into consideration.

9. With regard to the first preliminary objection raised, it is apparent that the Notice of Motion dated 9th January 2013 was filed by persons who purchased land from Administrators of the Estate between the 26th July 2012 and 20th September 2012. The transactions were conducted prior to the grant being confirmed. This was sale of immovable property that formed the estate of the deceased.

10. Section 82 of the Law of Succession Act provides:-

“ personal representatives shall, subject only to any limitation imposed by their grant, have the following powers:

a.

b. To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or ay part of assets vested in them, as they think best;

Provided that-

1. No immovable property shall be sold before confirmation of the grant”.

No authority was sought from the court to dispose of assets left by the deceased.

11. Having purchased property from persons who had no Authority, they have no legal authority to seek to be enjoined in the succession cause in an endeavour to pursue their interest. These purchasers can sue the sellers in a civil court to recover their monies.

12. In the premises the preliminary objection raised is meritorious. The same is allowed. Accordingly, the Notice of Motion dated 9th January 2013 be and is hereby struck out with no orders as to costs.

13. With regard to the preliminary objection dated 12th July 2013, persons seeking revocation of the grant are purchasers who entered into sale agreements with administrators and beneficiaries of the Estate between the years 2008 and 2011. This was long after the demise of the deceased and prior to the grant being confirmed. No leave was sought from the court to dispose of the assets of the deceased.

14. Both the purchasers and sellers in this case interfered with the Estate of the deceased person which did amount to a criminal act. Therefore they cannot purport to have acted with untainted hands and seek to have the grant revoked. The preliminary objection raised in the circumstances has merit. The application dated 24th May 2015 is struck out.

Since the respondents are to blame for what transpired each party will bear their own costs.

15. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 30th day of JULY 2015.

L.N. MUTENDE

JUDGE