

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 855 OF 1995

IN THE MATTER OF THE ESTATE OF GEORGE MBUGUA NGARI (DECEASED)

RULING

1. The application dated 9th April 2014 seeks that the second applicant be allowed to fence off an $\frac{1}{8}$ of Dagoretti/Waithaka/159 as the first applicant and the respondent pursues letters of administration in respect of the estate of Gladys Nini George.
2. The cause relates to the estate of George Ngari who died testate on 3rd August 1994. Representation was granted to his sons; Jason Mbugua and Sammy Ngari Mbugua, on 17th December 1999. The said grant was confirmed on 28th July 2000. The subject property, Dagoretti/Waithaka/159, was to be shared equally between the widows of the deceased – Gladys Nini, Esther Wanjiku and Susan Gathoni.
3. On 4th June 2011, the second applicant entered into a sale agreement with the first applicant to acquire an $\frac{1}{8}$ of Dagoretti/Mutuini/159 for a consideration. The interest purportedly sold was what the first applicant considered to be his share in the share of his mother in Dagoretti/Waithaka/159.
4. It transpires that the first applicant's mother, Gladys Nini, died and her children have been unable to take representation over her estate. They have resorted to having the matter resolved administratively through various government departments.
5. The second applicant has moved to court in an effort to secure what he considers to be his interest in the property.
6. The interest that was sold to the second applicant comprised of a share in the estate of the deceased herein allotted to a beneficiary who has since died. Upon confirmation, that share formed part of the estate of the dead beneficiary. In my view, transfers of interests in that share cannot be the subject of the instant court proceedings. The matter can only be addressed in proceedings in the estate of the said beneficiary, Gladys Nini George.
7. I have noted that no representation has been granted in respect of the estate of the said Gladys Nini George. That being the case, her estate does not vest in any of her children, and therefore none of them has any right to transact any business with any third party over the property. Such dealings with the property are barred by Section 45 of the Law of Succession Act, Cap 160, Laws of Kenya. It amounts to meddling with the estate.
8. The sale transaction between the applicants contravened Section 45 of the Act. Both applicants intermeddled with the estate of the deceased by entering into a sale agreement on the assets without any legal authorization. Section 45 creates an offence relating to intermeddling and imposes criminal sanctions. The applicants are open to criminal prosecution. Their acts were unlawful and criminal, and the transaction was no doubt a nullity.
9. Then there is also Section 82(b)(ii) of the Act, which outlaws sale of immovable property before grant is confirmed. The interest allegedly sold to the second applicant was immovable property. There is no grant in respect of the estate of Gladys Nini George. The alleged sale therefore also contravenes Section 82(b) (ii) of the Act. It is an illegality under this provision.

10. In view of the above, there cannot be any merit in the application dated 9th April 2014. It awaits only one fate, dismissal. I do hereby dismiss the same with costs to the respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE