



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCC MISC NO. 29 OF 2013.

IN THE MATTER OF THE ESTATE OF HELENIA SHIUTHARA ALANDECEASED

MARY RWAMBA NJAGI APPLICANT

VRS

MARY IGOKI IRERI RESPONDENT

RULING

Mrs, Mary Rwamba Njagi (the protestor) filed this application for the revocation of the confirmed grant issued to the respondent on 28.2.2013 from the Runyenjes Magisterial Court.

The hearing of the protestors application proceeded by way of oral evidence on 7.7.2014. According to her the respondent administratrix is her sister-in-law. It was her evidence that her mother-in-law, hellen Shiuthara Alan was registered a joint owner of land reference No. with a late husband in order to protect the land from being sold by her late husband. The protestor further stated that she did not know when the respondent went to Runyenjes court.

This appears to be in reference to the succession proceedings in Runyenjes court.

The evidence of the protestor is supported by Franis Ileri Mugo (P.W.1) . P.W.1 was assistant chief. The protestor approached him (P.W.1) and told him that her husband had sold four (4) of the six acres leaving a balance of two acres. In the presence of P.W.1, it was agreed the mother-in-law of the protestor be registered jointly with the husband if the protestor protect the interests of the children of both the protestor and her husband. It is the evidence of P.W.1 that the mother-in-law to the protestor told him that she had no interest in the suit land.

Furthermore, P.W.1 received a complaint from the son of the protestor that the respondent was “processing” their land without involving them.

Samuel Njeru (P.W.2) also supported the evidence of the protestor that the mother of the respondent had her own land at Karimaru. According to P.W.2 the respondents mother stayed with her husband at Karimaru. P.W.2’s evidence also supported that P.W.1 as to how the mother of the respondent was registered as a co-owner of the land that is the subject of the current succession cause.

The evidence of Josiah Saravatpre (P.W.3) also supports that of P.W.1 and P.W.2 the land in issue was was that of Nyaga, the husband of the protestor.

DEFENCE CASE

Mary Igoki (D.W.1) gave evidence stating that her late mother owned her own land. It is that land that she decided to inherit along with the protestor.

According to her she was farming on the land in dispute and that the protestor is her sister-in-law. She inherited the land in issue which she divided equally into two shares of one acre each. She took one acre and the remaining one acre went to the protestor.

Furthermore, she stated that the land in issue was given to protestor's husband by the clan. She denied knowing that her parents sold the land they owned. The respondent maintained that the one acre that she inherited belonged to her late mother.

FINDINGS

I have evaluated the evidence produced on the protestor and her witnesses and that of the respondent. I believe the evidence of the protestor that the respondent filed succession proceedings in the Runyenjes magisterial court without informing her. I also believe her evidence that she never gave consent to the respondent's mode of distribution of the land in dispute.

Furthermore I find that respondent's evidence has not been controverted that of the protestor. On two key areas. First the respondent did not consult the protestor before she (respondent) was appointed the administratrix of the estate. Second, the respondent did not obtain the consent of the protestor and other beneficiaries before she (respondent) decided on the mode of distribution of the estate of the deceased two persons.

The evidence of the respondent only dealt the issue of ownership of land. Parcel No. Kagaari/Kanja/2885, which was not in issue before the court.

In the light of the foregoing matters I find the protestor had made out a case for the revocation of the grant issued to the respondent on 28.2.2012 in terms section 76 Law of Succession Act. I hereby revoke the confirmed grant with no order as to costs.

J.M. BWONWONGA

JUDGE. - 24.11.15

24.11.2015

Bwonwonga – J

Protestor present in person

Respondent present in person

Court Clerk Nyaga

Interpretation English/Swahili/Kiambu

ORDER

Ruling delivered in open court in the presence of both parties.

J.M. BWONWONGA

JUDGE – 24.11.15