



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO. 144 OF 2006

IN THE MATTER OF THE ESTATE OF PATRICE MULEFU NAMBIRO (DECEASED)

BETWEEN

JACKSON OUNDO MULEFU.....PETITIONER

VERSUS

JACKSON WANDERA..... OBJECTOR

AND

EDWIN WESONGA.....INTERESTED PARTY

RULING

1. This Decision is intended to answer, firstly, the Summons of Revocation dated 30th April 2008 in which Jackton Wandera (the Objector) seeks that the Grant of Letters of Administration made to Jackson Oundo (the Petitioner) be revoked. The Decision is also to decide a protest by Edwin Wesonga (the Protestor) filed herein on 23rd March 2009.

2. It is not contested that when Patrice Murefu Nambiro (The Deceased) died on 5th February 1994, he was registered as proprietor of the land known and described as Bukhayo/Matayos/204 (The estate Land). It would seem to be the sole asset to the Deceased Estate. The contents of a Certificate of Search dated 29th December 2005 shows that parcel of land measured approximately 15.5 hectares.

3. The Petitioner herein is the son of the Deceased and at the time of presenting the Petition he filed a Consent to the making a Grant dated 29th June 2007 signed by John Wafula Wandera, Daniel Okoth Wandera and Gilbert Ochieno Wandera authorizing him to present the petition. These three (3) are, in The Petition, said to be the other sons to the Deceased.

4. The claim by the Objector is that he purchased 3.5 hectares of the Estate Land and seeks to have this recognized in these proceedings. The Objector led evidence to prove that vide a written agreement dated 20th July 1980 he bought the 3.5 hectares from the Deceased. That although the agreement therein named Nicholas Wesonga Olangania as the purchaser, the named purchaser was merely standing in for him. The Petitioner asked Court to give regard to Clause 4 of the agreement which reads

“The names to be written on the transfer will be Jackton Wandera Olangania his child.”

In further proof of his interest the Objector produced a Letter of Consent dated 25th August 1981 (Exhibit 2 (b)) in which the Nambale Land Control Board sanctioned the sub division of the Estate land and transfer of a portion from the Deceased to the Objector.

5. The Protestor is the son of Nicholas Wesonga Olangania and the brother of the Objector. His case is that it was his father (now dead) who purchased the 3.5 hectares of the Estate land from the Deceased and not the Objector. He contends that it is the Estate of his late father, and not the Objector, which has a legitimate claim over this interest.

6. The Petitioner neither recognizes the claim of the Objector nor Protestor and through his Counsel submitted that the Objector was not the purchaser and was not privy to the agreement of 20th July 1980. Further that the purported Consent of the Land Control Board was invalid as it was obtained outside 6 months from the date of the agreement (contrary to Section 8 of The Land Control Act).

7. This Court is urged by the Objector's Counsel to find that the Objector hold an interest as a creditor to the Deceased's Estate. However that interest, as stated earlier, is not recognized by the Petitioner. As the Objector does not have a Court Decree upholding his interest then this Court would have to interrogate that claim and find that it is valid before allowing the objection. The Objector in essence is asking this Court to adjudicate over a Civil claim. This my view, would muddle up what is purely a probate and Administration matter. As the Petitioner now holds a Grant of Letters of Administration to the Deceased's Estate, the Objector can mount a Civil Claim against the Petitioner in that capacity. That would be the forum for the Objecto to prove that his purchase of the land was valid and in conformity with Law.

8. As for the contest between the Objector and the Interested Party, that is a contest that should be resolved in Probate and Administration proceedings in respect to their father's estate and not the Estate of the Deceased herein.

9. The upshot is that both the Objection and the Protest fail. They are hereby dismissed with costs.

10. But so as to give the Objector an opportunity to move the proper Court, and to avoid a situation where the subject matter is put beyond the reach of that Court, I shall stay confirmation herein for 45 days. Any party shall be at liberty to apply.

Dated, signed and delivered at Busia this 24th day of November 2015.

F. TUIYOTT

J U D G E

In the presence of:-

Oile – C/Assistant

.....for the Petitioner

..... for the Objector

..... for the Interested Party