



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 326 OF 2003**

**IN THE MATTER OF THE ESTATE OF JUMA KARIUKI ALIAS KARIUKI JUMA ALIAS  
KARIUKI S/O JUMA (DECEASED)**

**REHOBOTH CHRISTIAN MINISTRY.....APPLICANT**

**VERSUS**

**ANASTACIA WANGARI KARIUKI.....RESPONDENT**

**JUDGMENT**

1. The deceased Juma Kariuki alias Kariuki Juma alias Kariuki s/o Juma died intestate on 4<sup>th</sup> November 1999 at Kihara in Kiambu. On 30<sup>th</sup> April 2003 his widow Anastasia Wangari Kariuki (the respondent) and his son Juma Kariuki Khamisi were appointed by this Court as the joint administrators of the estate. This followed a petition that they had filed. On 29<sup>th</sup> April 2005 Juma Kariuki Khamisi entered into agreement in which he sold about 0.22 Ha (about 100 ft by 100 ft) of the deceased's estate L.R.Kiambaa/Kihara/764 to the applicant Rehoboth Christian Ministry Centre who were represented by John Kamau Ng'ang'a, Reuben Karongo Wainaina and Patrick Kamau Munga (PW 1). The agreement indicated that Juma Kariuki Kihara was selling his entitlement (portion) of the estate of the deceased. The grant had not been confirmed.
2. While this Cause was still going on, the respondent moved to Kiambu Chief Magistrate's Court and filed Succession Cause No. 165 of 2013, petitioning for the grant of letters of administration intestate in respect of the same deceased. She obtained a grant on 16<sup>th</sup> September 2013 which was hurriedly confirmed on 26<sup>th</sup> September 2013. In the Certificate of Confirmation the deceased's Kiambaa/Kihara/764 was shared as follows:-
  - a. the respondent – 0.22 ha;
  - b. Alice Muthoni Kibura – 0.073 Ha;
  - c. Salome Nyaikamba Waweru – 0.065 Ha;
  - d. John Njoroge Kinuthia – 0.0365 Ha; and
  - e. John Njoroge Kinuthia – 0.073 Ha.
3. On 30<sup>th</sup> May 2014 the applicant filed before this Court the present application seeking the revocation of the grant that was issued to the respondent at Kiambu Court. The application was based on the grounds that:-

- a. the proceedings to obtain the grant were defective in substance;
  - b. the grant was obtained by means of untrue allegation of fact essential in point of law, in that there was an existing grant which had been issued by this court which the respondent did not disclose;
  - c. the court at Kiambu did not have jurisdiction to issue the grant, a fact that the respondent knew but concealed; and
  - d. the respondent had failed to diligently administer the estate of the deceased.
4. Hassan Kamau Juma, Mohamed Juma Kariuki, and Amina Wambui Juma swore replying affidavits to oppose the application. The applicant had stated in the supporting affidavit that they had bought part of the deceased's estate following the sale agreement, and that all the family members knew of the transaction, and yet the respondent had quietly proceeded to file the petition and obtain the grant without reference to him. In the replying affidavits the applicant was said to be a stranger to the estate; that the applicant was not one of the beneficiaries of the estate of the deceased. Secondly the sale was denied. The deponents stated that Juma Kariuki Khamisi who had allegedly entered into the sale agreement in 2005 had in fact died in 1999.
  5. There is no dispute that Juma Kariuki Khamisi has since died. According to the applicant, he died in 2007. The respondent's case is that he died in 1999. The said sale agreement was dated 29<sup>th</sup> April 2005.
  6. The respondent was represented by Kairu Kimani & Co. Advocates and the applicant by S. M. Muhia & Co. Advocates. Patrick Kamau Munga (PW 1) testified on behalf of the applicant. The respondent and counsel did not attend the hearing.
  7. The respondent knew that she had, together with the late Juma Kariuki Khamisi, obtained a grant of letters of administration in respect of the estate of the deceased on 30<sup>th</sup> April 2003. This matter was pending when she went to Kiambu Court and obtained another grant for the same estate without disclosing the existence of this grant. This was fraud on her part, and it is for that reason that I recall the grant and the confirmed grant that were issued by Kiambu Court and revoke them. The distribution of the estate that was done is nullified, and any fresh titles that may have been issued are cancelled. Juma Kariuki Khamisi could not have died in 1999 as he petitioned this court in 2003 for a grant.
  8. Further, the late Juma Kariuki Khamisi did not hold a confirmed grant. Under **sections 55 and 82 of the Law of Succession Act (Cap 160)** he was prohibited from selling the deceased's property. From the exhibited sale agreement, it is clear that the late Juma Kariuki Khamisi was hoping to eventually get 0.22 Ha. from the deceased's estate when it was eventually shared and then be able to transfer it to the applicant. It was known that he did not have any legal authority to sell the deceased's property, or any portion of it. A person who purchases property forming part of the estate of the deceased from a person with no legal authority to sell such property acquires no interest in the said property and has no remedies against the estate, especially if he acquires the same while well aware that the seller had no legal title to it. **(In Re Estate of Kariuki [2002]2 KLR 172)**. I find that the applicant has no claim against the estate of the deceased. His remedy lies in suing for refund of the purchase price from the administrators of the estate of the late Juma Kariuki Khamisi.
  9. In this limited manner, the application dated 30<sup>th</sup> May 2014 is allowed with costs.

**DATED and DELIVERED at NAIROBI this 8<sup>th</sup> day of December 2015.**

**A.O. MUCHELULE**

**JUDGE**