



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 80 OF 2007**

IN THE MATTER OF THE ESTATE OF MUTUNE MUTUNG'I ALIAS MUTUNE MUTUNG'I  
(DECEASED)

**RAYMOND NDANDI MUTUNE.....PETITIONER/APPLICANT**

**VERSUS**

**NDINDI MUTUNE.....1<sup>ST</sup> RESPONDENT**

**PETER KIOKO NDAVI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. **Mutune Mutungi** alias **Mutune Mutungi** died on the **2<sup>nd</sup> July, 1991**. His survivors petitioned for Letters of Administration intestate. A Grant of Letters of Administration intestate was issued to **Raymond Ndandi Mutune** to administer his estate on the **24<sup>th</sup> June, 2008**.
2. On the **9<sup>th</sup> July, 2007** **Ndindi Mutune**, the widow to the deceased and beneficiary to his estate sold **Plot No. 42B Kangundo Market** an asset forming part of the Estate of the deceased to **Peter Kioko Simon** at a consideration of **Kshs. 450,000/=**. Thereafter the grant issued was confirmed and a certificate thereof issued on the **17<sup>th</sup> February, 2012**.
3. **Peter Kioko Ndavi** filed an application dated **18<sup>th</sup> October, 2012** seeking issuance of an order of prohibition against the petitioner to transfer, dispose off, or alienate **Plot No. 42B** and annulment of the confirmed grant.
4. The Petitioner raised a Preliminary Objection to the application seeking an order striking it out. The Preliminary Objection that was raised on points of law was premised on grounds that the allegations raised in the application are purely of a civil/contractual nature that can only be pursued in a Civil Court against persons who were involved in the transaction. The property in issue belonged to the estate of the deceased and purchase of the same amounts to intermeddling with the estate. Annulment of the grant cannot be a redress thereto.
5. In determining whether or not the Preliminary Objection raises any points of law, I would revert to what was stated in the case of **Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd [1969] E.A. 696**. It was held that a preliminary must be on a pure point of law and cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
6. The background of the matter as aforesaid clearly shows that the person who disposed off part of the estate of the deceased was his widow but not a personal representative to the estate. She lacked *locus standi* to transact on behalf of the estate of the deceased. As a surviving spouse she was entitled to a life interest on the property of the deceased. She could sell some of the property

- for her maintenance but not immovable property and this could only be done with the consent of the court and the consent of her children. (*See section 37 of the Law of Succession Act*).
7. The action of the widow of the deceased amounted to a criminal act of intermeddling with the estate of the deceased (*see section 45 of the Law of Succession Act*).
  8. In the premises, the issue whether or not this court should entertain the application dated **18<sup>th</sup> October, 2012** in the instant Succession Cause instead of the matter being pursued as a Civil Cause is purely on points of law. This is a matter that will be determined with finality without ascertaining any other facts.
  9. From the foregoing it is apparent that the relief the purchaser is entitled to can be obtained from a Civil Court. Circumstances in which a grant can be annulled are set out in **Section 76** of the **Law of Succession Act** which stipulates thus:-

***“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—***

- a. *That the proceedings to obtain the grant were defective in substance;*
- b. *that the grant was obtained fraudulently by the making of false statement or by the concealment from the court of something material to the case;*
- c. *that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*
- d. *that the person to whom the grant was made has failed, after due notice and without reasonable cause either –*
  - i. *to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has order or allow; or*
  - ii. *to proceed diligently with the administration of the estate; or*
  - iii. *to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs(e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*
- e). *that the grant has become useless and inoperative through subsequent circumstances.*

10. Intermeddling with the estate of the deceased is not one of the conditions. The grant cannot be annulled on that ground.

11. Having considered the Preliminary Objection raised, I find it having merit. The same is upheld. Therefore the application dated 18<sup>th</sup> October, 2012 stands struck out. Costs to the respondent/Petitioner.

**DATED, SIGNED and DELIVERED at MACHAKOS this 23<sup>RD</sup> day of MAY 2014.**

**L.N. MUTENDE**

**JUDGE**