



IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 1072 OF 2010

LYDIAH WAMUYU MUTHEE..... DECEASED

AND

GRACE GATHIGIA MIANO..... PETITIONER

RULING

1. GRACE GATHIGIA MIANO petitioned for grant of letters of administration of the estate of LYDIAH WAMUYU MUTHEE and named the following survivors:

- a. SHADRACK MACHARIA NDEKERE - son
- b. GRACE GATHIGIA MIANO - Daughter
- c. PAULINE WANJA MWANGI - Daughter in law.

2. On 13th July 2011 the grant was confirmed and distribution ordered as follows:

LR NAROMORU/BLK1/RAGATI/265 – Shadrack Macharia Ndekere.

BARCLAYS BANK SHARES

Grace Gathigia Miano

Shadrack Macharia Ndekere In equal shares

Pauline Wanja Mwangi

3. On 25th June 2013 Mary Wamuyu filed an application under certificate of urgency in which she sought among others orders

a. Injunction restraining the 1st Respondent from signing or in any way endorsing any transfer forms in respect of parcel No. NAROMORU/BLOCK1/RAGATI/265 pending an application for revocation of grant.

b. order of inhibition against dealing with the said land pending the hearing of the application herein.

4. In a supporting affidavit attached to the said application the applicant deponed that she was a wife of the 2nd respondent Shadrack Macharia Ndekere and a sister in law to the first respondent and

that during the life time of the deceased the same had stated that the suit property be allocated to her children namely:

Christian Mumbi Ndekere - 26 years

David Muriithi Ndekere - 22 years

L W N - 17 years

5. It was deponed that since the said children were then minors the deceased had indicated that the land be registered in her name to hold in trust and that in total disregard thereof the 1st respondent allotted the land to the 2nd respondent and that if the land is transferred to the 2nd respondent the same would be sold.
6. In response thereto the respondent filed a replying affidavit on 2nd July 2013 in which she deponed that the deceased in her life time had maintained that the said parcel of land should be allotted to her children who she understood to mean her children and grandchildren as well and not only her grandchildren and that there was nothing wrong in allocating the said land to the 2nd respondent.
7. She further deponed that it is true that the 2nd respondent has advertised the said land for sale but that she had opposed the intended sale.
8. The 2nd respondent on 13th October 2013 filed a replying affidavit in which he deponed that there is a collusion between the applicant and the administratrix of the estate and that for almost two (2) years the administratrix has refused to execute the necessary transfers.
9. The application was certified urgent and interim orders granted. Directions were further issued that the application for annulment of grant dated 25th June 2003 be heard by way of written submissions which have now been filed.

SUBMISSION

10. On behalf of the applicant it was submitted that it was the wish of the deceased to allocate the subject parcel of land to her grandchildren and that the 2nd respondent's intention is to sell the said parcel of land thereby disinheriting the said grand children.
11. On behalf of the 1st respondent it was submitted that it was agreed that LR. No. NAROMORU/BLOCK 1/RAGATI/265 be allocated to the 2nd respondent because his children were in school and that the 2nd respondent started making arrangements to dispose off the said land in total disregard to the wishes of the deceased.
12. On behalf of the 2nd respondent it was submitted that the summons herein lacks merit on the basis that the grant had been partly executed and that the applicants interest are well covered since the property was awarded to her husband and that there is nothing to prevent the 2nd respondent in having the property for the benefits of the family. It was submitted that there was collusion between the applicant and the 1st respondent.
13. From the affidavits of the applicant and the 1st respondent it is unchallenged that the intention of the deceased was that the property be given to her children whereas the applicant stated that it was to go to the grandchildren of the deceased. The 1st respondent deponed that it was to go to her children including the grand children and that the family consented that it be allotted to the 2nd respondent on behalf of his family.
14. The 2nd respondent in reply has not disputed the contention of the applicant and the 1st respondent as regards the intention of the deceased.
15. In view of the fact that the 2nd respondent has not rebutted the claim of trust I therefore find as a fact that the land was given to the 2nd respondent to hold in trust for his children who are the grandchildren of the deceased.
16. Since the administratrix has confirmed the same intention and the fact that the 2nd respondent has started a step towards selling the said property in view of section 73 of the Law of Succession Act I hereby allow the application herein in respect of LR NO. NAROMORU/BLOCK 1/RAGATI/265 and annul the grant in respect thereof and grant leave to the applicant herein to file a protest to the proposed mode of distribution in the summons general dated 7th July 2011

within the next 14 days from the date herein with no order as to cost.

Dated, signed and delivered at Nyeri this 19th day of September 2014.

J. WAKIAGA

JUDGE

Court: The ruling is read in open court in the presence of the petitioner's advocate

J. WAKIAGA

JUDGE

19/9/2014