



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

SUCCESSION CAUSE No. 87 of 2006

IN THE MATTER OF THE ESTATE OF JOHN KAMAU NDUNGU (DECEASED)

PHILOMENA WANJIKU KAMAU.....APPLICANT/OBJECTOR

VERSUS

GLADYS NJOKI KAMAU.....1ST RESPONDENT

JAMES KAMAU NDUNGU.....2ND RESPONDENT

MICHAEL MAINA KIHARA.....3RD RESPONDENT

RULING

On the 17/1/06 Gladys Nyoki Kamau and John Kamau Ndungu filed a petition for letters of administration for the estate of John Kamau Ndungu. Gladys Njoki Kamau was named as the deceased widow. John Kamau Ndungu was said to be the deceased's brother. On the 6/8/07 the 2 applied for the said letters of administration to be confirmed. The said application was granted by the court on the 15th April 2008.

On the 29/5/12 the objector applicant filed the application under consideration. The objector Philomena Wanjiku Kamau has filed application against the 2 administrators and one Michael Maina Kihara who states he has bought land parcel Ngong/Ngong/3464. In her application she is seeking the nullification and revocation of the grant, she also seeks that all the properties following the assets of the deceased's estate and more particularly Ngong/Ngong 3464 be maintained. She is also seeking that the 2 administrators Gladys Njoki Kamau and James Kamau Ndungu be order to immediately give a detailed account of and deposit into the court the proceeds of sale of Ngong/Ngong/3464 to one Michael Maina the 3rd Respondent and that the transfer and registration of the said parcel of land namely Ngong/Ngong/3464 to the said Michael Maina Kihara effected on the 24/2/12 at Ngong District land Registry be nullified revoked and/or cancelled and that the grant of letter of administration intestate issued to the 2 administrators on the 16/3/06 and confirmed on the 15/4/08 be revoked and/or nullified.

The 2nd administrators were served with the application but they did not respond nor did they attend court.

In her affidavit supporting the objector the applicant states that she is the first wife of the deceased and married him on about 1978 under Kikuyu customary law until 1988 when they separated and the deceased remarried the 1st respondent. That at the time of the deceased death the marriage was still subsisting. That they were blessed with 4 children namely Antony Ndungu kamau, Judy Wanjiku Njuguna, Felister Wanjiku Kamau and Elizabeth Njoki Kamau. That she only came to learn of the

existence of the petition when she conducted a search a parcel Land No. Ngong/Ngong/3464 and noticed that the case land been mentioned in the green card and the parcel of land transferred to the 1st respondent and one Naftally Ndungu Kamau and then to Michael Main Kihara without her knowledge. She states that the administrators clandestinely and without her consent as widow of the deceased filed the petition. That the 2 did not disclose to the court that the deceased had another family and that his estate Ought to have been distributed to all the beneficiaries as by law provided. That neither her nor her children were served with any citations as required by law or seek her consent.

That the 2 administrators have fraudulently sold and transferred the said parcel of land to the 3rd Respondent and that they have refused to disclose and/or given her a full account of the proceeds of sale for the same hence her application.

In a replying affidavit dated 21/5/14 Michael Maina Kihara depones that the objector is unknown to him. that he purchased land parcel Ngong/Ngong/3464 from Gladys Njoki Kamau, that the Objector had the opportunity to object to the letters of administration in 2006; that the objector has been indolent in the cause, that after he paid for the said land parcel he presented the documents to the lands office and he was issued with the title on the 24/2/14 and that he has already subdivided the said plot into 17 subplots, that the said titles were issued against the approved mutations and therefore the mother title does not exist. The 3rd respondent asked this court to dismiss the application.

The applicant did not respond to the said replying affidavit.

I have considered all that is before me and I find as follows;-

The objector claims that she was the 1st wife to the deceased. Apart stating so the applicant has adduced no other evidence to show that she was married to the deceased under Kikuyu customary law. The 1st Respondent filed a letter from the chief of Muguga location dated the 20/7/2005 that states that she was married to the deceased under Kikuyu customary law and that they had 4 children named in the said letter. The applicant further claims that they had 4 children with the deceased there is no birth certificate or even an affidavit from any of the children named to state that the deceased was their father. The applicants case as presented does not persuade this court that there is need to revoke the others of administration obtained on the 15/4/08.

The 3rd respondent has shown that he purchased the land parcel Ngong/Ngong/3464 he has exhibited the agreement he signed with the 1st administrator and one Naftally Ndungu Kamau. He has a title for the said parcel of land and has even subdivided it as exhibited. The applicant's case is not a strong one. I therefore decline to grant the orders sought. The application for revocation of the grant is declined.

No orders as to costs.

Dated, signed and delivered this 21st November 2014.

R. E OUGO

JUDGE

In the presence of:

.....**APPLICANT/OBJECTOR**

.....**1ST RESPONDENT**

.....**2ND RESPONDENT**

.....3RD RESPONDENT

.....COURT CLERK