



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**SUCCESSION CAUSE NO. 325 OF 2002**

*In the matter of the Estate of NJAGI NGUU (Deceased)*

**NDWIGA NGUU.....APPLICANT/ADMINISTRATOR**

**VERSUS**

**RAURENSIA WAMBOGO NJAGI.....1ST RESPONDENT**

**LOISE WAMBUGI NJAGI.....2ND RESPONDENT**

**J U D G M E N T**

The applicant/administrator in this cause Ndwiga Nguu in the estate of the deceased Njagi Nguu applied for confirmation of grant in his summons dated 1st October 2010. In his affidavit in support of the summons the applicant names four people including himself and his brother Patrick Kathee Nguu as beneficiaries to get one acre each out of the only parcel of land of the deceased NGANDORI/KIRIGI/456. The applicant is the brother of the deceased Njagi Nguu.

The summon was opposed by the protesters Rauresia Wambogo and Loise Wambugi Njagi in their affidavit sworn on the 9th November 2010 on grounds that their late husband Njagi Mwendano had bought two acres out of the suit land from the late Njagi Nguu to be excised from NGANDORI/KIRIGI/456.

The original administrator in this cause was one Janet Karenga the mother of the deceased. The co-widow of the protesters one Domitira Wambugi Njagi objected to Janet Karenga Nguu and later passed. In application dated 27/11/2007 by the protesters herein to be substituted in place of Domitira Nguu was withdrawn on 30/9/2010.

The petitioner Janet Nguu was appointed the administrator of the deceased's estate on 24/10/2001. She passed on the 19/9/2003 and was substituted by her son the Applicant herein Ndwiga Nguu.

The case of the protesters is that their late husband Njagi Mwendano was buying land from the deceased Njagi Nguu during his life time. The parties had an agreement for purchase of two acres to be excised from NGANDORI/KIRIGI/456. However, Njagi Mwendano died before transfer was executed in his favour by the deceased Njagi Nguu. PW1 produced a photocopy of the sale agreement, the first page of the original agreement dated 27th March 1975.

The protesters testified that after the purchase of the land Njagi Mwendano took possession of it and that his family has been cultivating it over the years and up to the hearing of this protest.

The protesters say they have cultivated seasonal crops on the land and have also planted bananas and trees. The purchaser paid deposit of Shs.2,000/= and later paid the balance of Shs.3,000/=. According to the protesters the purchase price was fully paid. The claim of the protesters is for two acres out of the parcel NGANDORI/KIRIGI/456 registered in the name of the deceased.

The applicant/administrator Ndwiga Nguu testified that he is the brother of the deceased and that he took over the administration of this case from his late mother Janet Karenga. He said that the protesters are known to him because they were cultivating on the land of the deceased which was given to their late husband by the deceased.

The applicant says there was land sale agreement between the deceased and the late Njagi Mwendano. However, the two acres Njagi Mwendano was buying was not surveyed or excised from the four acre land parcel namely NGANDOR/KIRIGI/456. It is the applicant's case that even if the protesters have been cultivating the land, they are not entitled to any portion of it for they are not beneficiaries of the deceased.

The issues for determination is whether the protesters are entitled to two acres out of deceased's estate land reference number NGANDORI/KIRIGI/456. The protesters produced a photocopy of land sale agreement where the deceased Njagi Nguu agreed to sell and the late Njagi Mwendano agreed to buy two acres out of NGANDORI/KIRIGI/456. The original agreement was not available and only a tattered first page was produced. The agreement shows that the purchaser paid Kshs.2,000/= and that the balance of Shs.3,000/= was to be paid at a date not specified in the agreement.

The protesters did not produce the consent of the Land Control Board which is a requirement of the law and was a condition precedent in the copy of the agreement produced.

Section 6(1) of the Land Control Act provides

*(1) Each of the following transactions that is to say—*

*(a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;*

*(b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.*

The land in question is agricultural land and the transaction is controlled under Land Control Act. The transaction therefore required validation by obtaining consent under Section 6(1) of the Act. Failure to obtain consent renders the transaction *void ab initio*. There was no evidence of consent having been obtained from the relevant Land Control Board within six months from the date of the agreement. It was not disputed that the protesters cultivate or used to cultivate the portion in question among other people who had been given portions to by the deceased or by his family members.

The protesters failed to adduce evidence that the balance of Shs.3,000/= as stipulated in the agreement was ever paid to lay a basis of recovering the full purchase price by the protesters.

It is also not disputed that when the parties entered into the agreement, the two acres had not been excised from the main parcel. The transaction aborted when on expiry of six months from the date of the agreement for lack of the requisite Land Control Board consent.

On the other hand, the protesters do not qualify for a share in the deceased's estate since they are not heirs as described by Law of the Succession Act. In the case of **MWANGI VS MWENJATHI [1981] KLR 400 Civil Case No. 589 of 1977**, it was held:-

1. *That the sale was void for all purposes because the Land Control Board had not given its*

*consent within three months of the agreement hence specific performance cannot be ordered.*

The purchaser having failed to obtain consent for the controlled transaction, the agreement was rendered void for all purposes and the only remedy for the protesters is to recover the purchase price.

I therefore find no merit in the protest and dismiss it accordingly. The protesters are not entitled to any share in the estate of the deceased. The applicant is hereby ordered to refund Kshs.2,000/= deposit paid on execution of the agreement to the protesters plus interest at court rates from the time of filing the protest.

The applicant summons for confirmation of grant dated 1st October 2010 is hereby allowed in terms of his affidavit. Certificate of confirmation to issue.

No orders as to costs.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF DECEMBER, 2014.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Mr. Kathungu for Administrator**

**F. MUCHEMI**

**J U D G E**