



REPUBLIC OF KENYA

High Court at Kitale

Succession Cause 260 of 2006

IN THE ESTATE OF: EVANS KAMAU MWAURA ::::::::::: DECEASED.

AND

ESTHER GATHONI KAMAU

SAMWEL KARANJA MWAURA

EVANS KAMAU MWAURA:::::::::::::::::: PETITIONER.

AND

EVANS KAMAU MWAURA :::::::::::::::::::: CAVEATOR.

R U L I N G.

At the time of his demise on 1st March, 1986, the deceased **EVANS KAMAU MWAURA**, was aged fifty (50) years. His widow, **ESTHER GATHONI KAMAU** and brother, **SAMUEL KARANJA MWAURA** and **EVANS KAMAU MWAURA**, petitioned for grant of letters of administration respecting his estate said to comprise a parcel of land described as **SUWERWA Plot No. 003174** within Trans Nzoia District which asset was encumbered by way of shares held in trust for the deceased's said brothers cum petitioners, Samuel Karanja and Evans Mwaura. Grant of Letters of administration respecting the deceased's estate was issued on 27th September, 2005 in favour of the aforementioned deceased's widow and brothers who are the first, second and third petitioners respectively.

However, on 17th February, 2006, a caveat was filed in court by yet another **EVANS KAMAU MWAURA** (herein referred to as the Caveator).

The effect of the caveat was to prevent any dealing in the estate of the deceased without notice to the caveator who laid a claim of ownership of the estate property being the said land parcel No. 003174 Suwerwa Scheme.

Despite the caveat, the three petitioners took out summons for confirmation of grant in the month of May, 2006 but in response thereto, the caveator filed an affidavit of protest against confirmation of grant dated 4th May, 2006. It is the said protest which is withholding the confirmation of the grant issued to the petitioners.

As per the court order made on 14th July, 2011, the protest was argued by way of written submissions on the basis of the facts presented by both the petitioners and the caveator in their respective supporting

affidavits. The caveator's written submissions were filed herein on 8th August, 2011 while the petitioners' written submissions were filed on 15th November, 2011.

In the protest affidavit dated 4th May, 2006, the caveator contends that he is the sole legal owner of the material plot No. 001374 Suwerwa Settlement Scheme and that the chief of Suwerwa location was misled by the petitioners into giving them a letter stating that the property belonged to the deceased.

The caveator contends that the material property does not form part of the estate of the deceased and therefore, the grant issued to the petitioners should not be confirmed in so far as the property is included as property belonging to the deceased.

The caveator's claim of ownership of the material parcel of land is supported by his wife, **MONICA NJOKI KAMAU**, in her affidavit dated 16th May, 2011, a Settlement Fund Trustee (SFT) clerical officer, **PETER NJUGUNA GICHERU**, in his affidavit dated 17th May, 2011, the chief of Suwerwa location, **SIMON CHERUIYOT RUTO**, in his affidavit dated 17th May, 2011 and an administration police officer, **CYRUS THAIRU KABUI**, in his affidavit dated 13th July, 2011.

In all the said affidavits, the property is described as plot No. 174 and is said to have been purchased by the caveator from the Settlement Fund Trustee sometime in 1966. It is alleged that the caveator settled in the land in 1966 and has since then carried out development thereon. It is indicated that the deceased was a step-brother of the caveator but had never visited the land nor laid any claim to it upto the time of his death in 1986.

in essence, all the affidavits in support of the caveator's protest indicate that the parcel of land known as plot No. 174 Suwerwa Settlement Scheme is lawfully owned by the caveator by virtue of having purchased it from the Settlement Fund Trustee way back in 1966.

Since this dispute does not involve any other property, it may safely be assumed that the said plot No. 174 Suwerwa Settlement Scheme is the same parcel of land described herein as plot No. 003174 Suwerwa Settlement Scheme.

The position taken by the petitioners is that the caveator's protest is devoid of merit. Their case is grounded on the facts deposed in affidavits deposed on 29th June, 2011 by the first and second petitioners as well as a family member, **TABITHA MURUGI MWAURA** and the deceased's brother, **JACKSON CHEGE MWAURA**.

Basically, the petitioners' case is that the material property does not belong to the caveator and all that was stated in support of his protest was full of falsehood. It is the petitioners' contention that the material property belonged to one Moses Mwaura Kamau who died in 1993 having been predeceased by his late son, the deceased herein, and leaving behind three wives and/or three houses. The petitioners contend that having been the eldest or first born son of the late Moses Mwaura Kamau, the deceased herein was registered as the proprietor of the material property to hold in trust for the second and third petitioners as representatives of the other two houses of the late Moses.

The petitioners have indicated that the caveator is a brother to the second petitioner and they are from the second house of the late Moses who it is said purchased the material property sometimes in 1965 from the Settlement Fund Trustees. The documents in the petitioners' list of documents filed herein on 22nd April, 2010 clearly indicate that the property was indeed purchased from the Settlement Funds Trustees in 1965.

the documents further indicate that the purchaser and hence the beneficial owner of the property was one **EVANS KAMAU MWAURA**. It is herein shown that the name Evans Kamau Mwaura is shared between three people in this matter i.e. the deceased, the third petitioner and the caveator.

It has herein been established without dispute that all the three people who share the name Evans Kamau Mwaura are related and that their relationship stems from the fact that they are all sons of the late Moses Mwaura Kamau who is said to have been the actual legal or beneficial owner of the material

property. Therefore, his aforementioned three sons would invariably be expected to benefit from the material property which appears to have been kept in the Hands of the deceased son to hold in trust for the three houses of the late Moses Mwaura Kamau.

Considering the foregoing, it would not be far-fetched for this court to opine that the caveator has taken advantage of his name which is similar to that of the deceased to lodge this protest with a view to disinheriting all the other members of the three houses of the late Moses Mwaura Kamau. No court of justice can allow such a thing.

It is without doubt that the bone of contention between the petitioners and the caveator is the ownership of the material property. This being a succession cause, it does not fall within the province of this court to make a finding on the ownership of the material property as between the petitioners and the caveator. That is a role best suited for a land court in an ordinary civil suit.

In sum, this protest by the caveator is overruled and dismissed with the result that the grant of letters of administration issued to the petitioners on 27th September, 2005 be and is hereby confirmed in terms of the summons for confirmation of grant filed herein on 12th May, 2006.

Each party shall bear own costs of this protest.

Ordered accordingly.

[Read and signed this 23rd day of April, 2013.]

J.R. KARANJA.

JUDGE.