



REPUBLIC OF KENYA

High Court at Bungoma

Probate & Administration 12 of 2012

JACKSON MUYILA WAKWEIKA.....DECEASED

AND

MARY SOITA MWASAME. ADMINISTITRIX/APPLICANT

versus

PATRICK SIMIYU WASIKE.....RESPONDENT

RULING

A case of intermeddling

[1] The Applicant herein is the administratrix of the estate of the deceased. She seeks for an order of injunction against one Patrick Simiyu Wasike (Respondent) to be restrained from planting and ploughing 0.72 Hactares of LR No.Ndivisi/Makuselwa/1342. She claims that the Respondent is a stranger to and an inter-meddler in the estate of the deceased. She further claims that the portion of land that the Respondent is meddling with is the property of the estate, and the widow of the deceased is the beneficial owner.

[2] According to the Applicant, the Respondent did not purchase the said land and that all the instruments used to transfer the said portion were forgeries as they were done much later after the death of the deceased. In any event, she argues, that no transfer of the estate property could have been possible since there has not been any confirmation of the grant.

Respondent's case

[3] The Respondent on the other hand claims that he purchased the suit property on 3/12/2002 and since then, he has been ploughing the said land. He has annexed the purchase agreement with the deceased which is dated 3/12/2002. He also claims that the suit property is not listed as one of the estate properties in Form P&A 5 as required by the law. He is therefore of the view that the Applicant cannot seek for the orders she is seeking with regard to the suit property.

COURT RENDERS ITSELF

[4] I have perused the court record and considered all rival submissions. I observe that the suit property is not listed as one of the estate property as required under the law. I however note that one Robai Wasila Mwira, the widow of the deceased has applied for revocation of the grant issued to the administratrix and her reasons for revocation are:

- a) *That the administratrix is a stranger to the estate of the deceased.*
- b) *That the grant was obtained without their knowledge.*
- c) *That the grant was obtained fraudulently by making false statement and concealment of material facts namely:*
 - i) *Omitted actual beneficiaries*
 - ii) *Omitted some assets of the estate*
 - iii) *Did not seek consents from adult beneficiaries.*

[5] From the record, it is clear there are real issues to be inquired into by the court. The fact that the suit property is not listed in Form P&A 5 does not mean it is not part of the estate property. In fact, the widow has stated that some immovable properties belonging to the deceased had been left out in Form P&A5. Further inquiry for purposes of identification and collection of the estate property is necessary upon full scale evidence. The Applicant has also raised salient matters which attracts the attention of the court, particularly on the purchase and transfer of the suit property by the Respondent. At the moment, it is not clear the circumstances under which the Respondent purchased and transferred the suit land into his name. Likewise, a deeper scrutiny of those transactions is needed.

In the interest of justice

[6] However, in the interest of justice in this case, it will not be right for the court to issue an injunction against the Respondent at this stage without the advantage full evidence. It is also necessary to preserve the property in question as there is a possibility it is part of the estate property. In the circumstances, I direct that the application for annulment of grant filed by the widow of the deceased, Robai Wasila Mwira, be heard first and a date be assigned to it by the Deputy Registrar on priority basis. That application, in my view, should settle all claims by the parties herein including the Respondent. Meanwhile, and before the application for annulment of grant is heard and determined, the Respondent shall not dispose of the suit property by way of sale, transfer, exchange, or charge it or in any other manner deal with the said piece of land as to dissipate the property. The Respondent, may however, plough and plant on the suit property pending the hearing and disposal of the application for annulment of grant.

Dated, signed and read in open court at Bungoma this 16th day of April, 2013.

F. GIKONYO

JUDGE

Ruling read in open court in the presence of:

Were holding brief for Mumu for Respondent

Situma for Applicant present

Khisa Court Assistant.

F. GIKONYO

JUDGE

