



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCC. CAUSE NO.1574 OF 1994

IN THE MATTER OF THE ESTATE OF EVANSON MBURU MUIRU (DECEASED)

ANTHONY KARANJA.....ADMINISTRATOR

VERSUS

PURITY NDIRANGU.....RESPONDENT

AND

DORIS M. WANJIRU KINUTHIA

**AMOS KINUTHIA GITAUINTERESTED
PARTIES**

RULING

On 25th of January 2005, Koome J (as she then was) revoked the grant of letters of administration intestate which had earlier been issued to Purity Mugure Ndirangu and Charles Mukiri. The grant had been issued in respect of the estate of Evanson Mburu MuiRU, the deceased to whose estate these proceedings relate. The court then issued a new grant to Antony Karanja and Purity Mugure Ndirangu. She ordered the two (2) administrators to file an application for confirmation of grant “as soon as possible”. It now emerges that upon Purity Mugure Ndirangu (the Respondent) being issued with the initial grant of letters of administration intestate, she sold a portion of land then comprising the estate of the deceased to the interested parties. According to the agreement dated 21st January 1999, the Respondent sold the parcel of land known as LR.No.Dagoretti/Uthiru/733 (suit parcel of land) to the interested parties for a purchase consideration of Kshs.1.3 million. The purchase consideration was paid to the Respondent in full. The interested parties took occupation of the suit parcel of land. Since the grant which was revoked had not been confirmed, the interested parties have not been able to have the suit parcel of land transferred to their names.

This state of affairs is what has prompted the interested parties to apply to this court pursuant to the provisions of **Section 76** of the **Law of Succession Act**, **Rules 44(1)** and **63(1)** of the **Probate and Administration Rules** and **Order 45** of the **Civil Procedure Rules 2010**, seeking orders of this court to

review the order that was made on 25th January 2005 with a view to having the same set aside in their entirety. The grounds in support of the application are stated in the face of the application. The interested parties contend that there was an error apparent on the face of the record that warrants review by this court. They state that they were bound to be prejudiced by the continued being in force of the said order which is to the advantage of the Respondent. The interested parties are of the view that the Respondent has used the said order to frustrate the interested parties in that she now wants to benefit twice from a state of affairs that she herself brought about. The application is supported by the annexed affidavit of Doris Wanjiru Kinuthia.

The application is opposed. The Respondent swore a replying affidavit in opposition to the application. She stated that the application was defective in that the interested parties had no capacity to bring the application. The Respondent asked the court to find that the application had been belatedly made and is meant to frustrate the final distribution of the properties that comprise the estate of the deceased to the beneficiaries.

At the hearing of the application, this court heard oral rival submission made by Mr. Njenga for the interested parties, Mr. Kitheka for the Co-administrator Antony Karanja and by the Respondent, was acting in person. Mr. Kitheka for the co-administrator supported the application made by the interested parties. The Respondent opposed the application. This court has carefully considered the said submissions. It has also read the pleadings filed by the parties herein in support of their respective opposing positions. Certain facts are not in dispute in this application. It is not disputed that the Respondent, as the administrator of the estate of the deceased, sold the suit parcel of land to the interested parties. She did this despite the fact that the grant of letters of administration intestate had not been confirmed. The court had not determined how the properties that comprise the estate of the deceased would be distributed to the beneficiaries. The Respondent received the full purchase consideration. It is common ground that the Respondent used part of the said purchase consideration to acquire a six (6) acre parcel of land in Mweiga, Nyeri County. A title to the said parcel of land registered as LR.No.Nyeri/Gatarakwa/686 was issued to the Respondent on 23rd March 2000. One of the reasons why the court revoked the grant which had been issued to the Respondent, was the complaint lodged by the Antony Karanja, the co-administrator (and a beneficiary) which was to the effect that he had been excluded from benefiting from the estate of the deceased.

From the facts of this application, it is clear that Antony Karanja has reached an understanding with the interested parties in respect of the suit parcel of land. The interested parties have agreed to transfer or cede part of the suit parcel of land to Antony Karanja. It appears that the interested parties realized that they would be fighting a losing cause if they persisted in their claim of the entire suit parcel of land taking into consideration the circumstances under which they came to acquire the same. The fact is that the Respondent, as the then administrator of the estate of the deceased, had no legal capacity to sell the suit parcel of land to the interested parties before the grant of letters of administration intestate had been confirmed. The issue for determination in this application is whether the Respondent can be allowed to frustrate the agreement that she entered into with the interested parties on basis that the grant of letters of administration intestate which had then been issued to her had been revoked thus, in effect, nullifying the said agreement for the sale of the suit parcel of land. This court agrees with the interested parties that it would be unconscionable for this court to permit the Respondent to benefit twice from a situation that she herself brought about. In this case, the Respondent sold the suit parcel of land to the interested parties despite the fact that she did not have capacity to do so. She was paid the purchase consideration in full. She used part of it to purchase another parcel of land in Nyeri County. She now wants the interested parties to again surrender to her part of the parcel of land that she had sold to them. That cannot be. It would be inequitable for this court to allow the Respondent to benefit from an illegality that she herself perpetrated. This court therefore holds that the Respondent has no interest in the suit parcel of land capable of being upheld by this court.

In the premises therefore, this court will allow the interested parties application in so far as it seeks the recognition of the agreement that was entered between the interested parties and the Respondent in 1999. However, the agreement reached between the interested parties and Antony Karanja in regard to how that parcel of land shall be distributed is hereby endorsed by the court. The Respondent shall not benefit from

the suit parcel of land because she already benefited on receipt of the purchase consideration. The co-administrator Antony Karanja shall be at liberty to apply for confirmation of grant partially on the basis of the agreement that he reached with the interested parties. There shall be no orders as to costs.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED ON 20TH DAY OF JUNE 2013.

W. MUSYOKA

JUDGE