



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Succession Cause 475 of 1998**

**IN THE MATTER OF THE ESTATE OF KIPSANG KANDIE (DECEASED)**

**MARY KIMOI SANG.....PETITIONER**

**VERSUS**

**CHARLES K. KANDIE.....RESPONDENT**

**JUDGMENT**

**Mary Koimoi Sang** (whom I will hereinafter refer to as “the widow”) is the widow of the late Kipsang Kandie (the deceased). She applied and was granted letters of administration to the deceased’s estate and upon its confirmation she got the piece of land situate in Baringo and known as **Title No. Baringo/Ravine/102/107** (the suit land) which was in the deceased’s name transferred to her name.

Upon learning of these developments, on

8<sup>th</sup> October 2004 Charles Kandie a brother of the deceased applied to have the grant to the widow revoked on the ground that it was fraudulently obtained by the making of a false statement and concealing of material facts. In his affidavit in support of that application he claimed that the suit land belonged to their late father, Kandie Chepkoron and that upon his death they allowed their deceased brother to be registered as owner in trust for himself and the other brothers John Kandie, Charles Kandie and Francis Kandie. In the circumstances, he further deposed, it was fraudulent for the widow to transfer the suit land into her name to their exclusion. He therefore prayed that the application be allowed and the suit piece of land be shared equally among them.

The widow strongly opposes the application. In her replying affidavit she averred that the suit land belonged to her late husband right from the word go. He applied to be allocated a piece of land but as he was then a civil servant and the Government policy at that time did not allow civil servants to be allocated pieces of land he had it allocated to his late father but he paid for it himself. In the circumstances she said the objectors had no interest in her late husband’s estate and she did not need to involve them in the petition for letters of administration.

After directions were taken the matter was heard by viva voce evidence. Charles Kipchumba Kandie, PW1, and Francis Kanina Kandie, PW2, testified that the suit piece of land which was originally known as Plot No. 219 Eldama Ravine Settlement Scheme was allocated to their late father. He paid the SFT loan upto the time of his death after which the deceased took over the repayments on behalf of the family because they were not employed. When their father died, they allowed the deceased as their eldest brother to be registered as the owner of the land in trust for himself and for the rest of the family members. In the circumstances all the sons of the late Kandie Chepkoron are entitled to an equal share of the land. They conceded in cross examination that except for the deceased non of them paid any money in respect of the SFT loan and that John Kandie has since vacated the suit land upon being asked by the widow to leave. Francis Kandie also conceded that they have another piece of land in Solai on which they are supposed to live.

On her part the widow strongly opposed the objectors’ claims. She testified that before they married, the deceased had in 1964 applied for land at Eldama Ravine Settlement Scheme but because the Government policy at that time forbade allocation of settlement land to civil servants, he got the suit land allocated to his late father. He thereafter paid the entire SFT loan by deductions from his salary. She produced the loan repayment receipts which are in her late husband’s name and some in the name of National Irrigation Board, her late husband’s employer. She also produced some letters from the National Irrigation Board showing that it was making payment on behalf of the deceased.

The widow further testified that in 1980 while Charles Kandie was working at Thika he requested to be allowed to live on the suit piece of land temporarily. Because the deceased was at that time sick and the widow was staying with him at Ravine they granted that request and allowed him to live on the land temporarily. Francis Kandie joined him in 2008 and they are now laying claims to shares of the suit land.

She said they have some other land elsewhere and urged me to dismiss their claims with costs.

Having considered the matter I find that two main issues fall for determination. One, whether or not the objectors were entitled to be involved in the petition for letters of administration of the deceased's estate. Two, whether or not the suit land belonged to the late Kandie Chepkoron and if so whether or not it should be shared equally amongst his four sons, including the deceased in this cause.

On the first issue, as I have pointed out this is an application seeking to revoke a grant of letters of administration on the ground that the widow obtained the same fraudulently without involving the objectors. **Section 66** of the **Law of Succession Act** gives widows of deceased persons first priority in the order of consanguinity on the application for grant of the letters of administration. The siblings of a deceased person are only allowed to petition for a grant if the deceased was not married or his widow and children as well as his parents are already deceased.

In this case the deceased was married and left a widow and children. The deceased's siblings have therefore no share in his estate and did not need to be involved in the petition for grant of letters of administration to his estate. In the circumstances the objectors' application has no basis and is hereby dismissed with costs.

The second issue is whether or not the suit land belonged to the late Kandie Chepkoron. It is trite law that there is a resulting trust in favour of the person who pays for the purchase price of land though registered in the name of another. In this case the objectors have not controverted the widow's testimony that in 1964 when the deceased applied for a settlement piece of land the Government policy forbade civil servant from being allocated settlement land. They have also not produced any proof that their late father paid any money at all towards the SFT loan for the suit land. As a matter of fact they conceded that they themselves did not pay any money. In my view their claim is based simply on the fact that the suit land was originally registered in the name of their late father. I do not believe their evidence that after the death of their father they got the suit land registered in the name of the deceased in trust for them. They have not said why they deemed that necessary and why they waited until after the death of the deceased to claim a share of it. They have not told me why their brother John Kandie voluntarily vacated the suit piece of land upon being requested by the widow.

Taking all these factors and the evidence on record into account I find that the deceased who was in 1964 a public servant working for the National Irrigation Board registered the suit piece of land in the name of his late father because Government policy at that time did not allow public servants to be allocated Government land. I also find that he thereafter paid the entire SFT loan for it. Upon his father's death he was therefore entitled to transfer it as he did into his name and his widow was in turn perfectly entitled to transfer it to her name when he died. In the circumstances I find that none of the deceased's brothers is entitled to a share of the suit land. Consequently I order that the deceased's brothers, Charles Kipchimba Kandie and Francis Kanina Kandie and any other brother of the deceased do vacate the suit piece of land within 30 days failing which they should be evicted. The widow shall have the costs of this application against the said Charles Kipchimba Kandie and Francis Kanina Kandie.

**DATED and DELIVERED this 27<sup>th</sup> day of April, 2010.**

**D. K. MARAGA**

**JUDGE.**