



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

SUCCESSION CAUSE NO. 149 OF 2004

GUTU NGUO.....DECEASED
VERSUS
1. BEATRICE WARUGURU.....)
)....PETITIONERS
2. GRACE WAMBUI MURIITHI.....)

R U L I N G

This matter has a long history. The deceased one **Gutu Nguo** died in 1976 leaving behind **Parcel No. INOI/KARIKO/740** which almost 34 years down the line is still the subject of court proceedings. I do not intend to go through that history. As matters stand now, this case has in my considered view wasted substantial judicial time and resources. I will therefore be very brief in my ruling. I have gone through the said history all the way from the Senior Magistrate's Court Kerugoya to the High Court and Court of Appeal and eventually back to the High Court where Hon. Justice Lenaola faced with an application for revocation found the matter *Res Judicata* and dismissed the same on 20.05.05.

In his elaborate and well reasoned Ruling, Judge Lenaola after reviewing the said history concluded thus:-

“I have considered very carefully the circumstances of this cause and I am convinced that like KULOBA J, found, the parties herein are now suing in plural whereas initially they were suing in singular. I am certain that when the succession cause did not go their way, and the Appeals hit a dead end, their ingenuity took them to the path of revocation of the original grant given by the lower court. The effect is to circumvent the decision in that court and attempt to obtain a different verdict yet a verdict has been rendered on the issues. Res judicata must be invoked to tell Applicants that no matter what they think of the decision by the lower court, it is the only decision now in operation and this or any other court is estopped from trying the same issues.....”

Little did the good Judge know that even before he rendered the said ruling the same parties had filed for and obtained a Grant of Letters of Administration over the same estate and had it confirmed and the plot distributed to one **NAHASHON KARIMI MWANGI**, who is now the 3rd Respondent in this application.

I have read and carefully considered the written submissions by both counsel herein. As stated earlier, I will be very brief in this Ruling. The 1st & 2nd Respondents even as at the time they filed the second succession cause knew clearly that the matter was still in court and that a court of competent jurisdiction had already held that they had no right whatsoever to inherit the land in question.

As at the time they filed the 2nd cause, they knew truly that the land in question had already been transferred to the Applicant herein and a Title Deed issued to him on 23/3/04 as exhibit “CKK5” clearly shows. They were therefore overtly dishonest in stating that the land still belonged to the late Gitu Nguo. That process was riddled with dishonesty and non-disclosure. As at the time they filed the second succession cause, the estate had already been distributed and the matter long settled. There was no remnant of an estate that could be subjected to a succession cause. The grant and certificate of confirmation issued pursuant to that succession cause were therefore null and void abinitio.

The Applicant herein is entitled to revocation of the Grant ex-dibito justitiae. Any transfer of the said plot, agreement for sale etc based on that Grant are therefore also null and void abinitio. I need to mention though that the 3rd Respondent was indeed not a purchaser for value without notice. As at the time the purported sale and transfer was done to him, the land in question had already been transferred to the Applicant herein. Even as at 22/6/04 when the 1st & 2nd Respondents filed the second succession cause, the land in question already belonged to the Applicant herein. There was no land to transfer to the 3rd Respondent. Indeed had he been just a little diligent, he should have confirmed the status of the plot he was buying before entering into the sale agreement. My deduction is that he was part and parcel of the entire scheme to circumvent the previous court orders.

The 1st & 2nd Respondents had no land to sell to him at all. Having said so, it is clear that the 3rd Respondent cannot seek refuge in **Section 93 of the Law of Succession Act – Cap 160 of the Laws of Kenya.**

In sum, the application for revocation dated 15.6.09 is hereby allowed. The Grant of letters of administration issued to **BEATRICE WARUGURU** and **GRACE WAMBUI MURIITHI** on 25.11.04 is hereby annulled. The Title Deed issued to the 3rd Respondent on the strength of that Grant is hereby cancelled.

The Applicant is awarded the costs of this application against all 3 Respondents.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 28th day of October 2010.

In presence of:- Mr. Muchira for Applicant & Applicant in person.