



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
SUCCESSION CAUSE NO. 68 OF 2007

IRERI NYAGA.....APPLICANT
VESUS
KARANI NGARI & anotherRESPONDENTS

R U L I N G

The Applicant herein had filed a summons for revocation of the Grant of letters of Administration herein only on 2 grounds. The first ground was to the effect that the respondent had failed to disclose that he had purchased 5 Acres of land from the deceased.

The second ground was that there was another succession cause pending before the same court. After hearing the summons for revocation by way of affidavit evidence following strong opposition for adjournment from counsel for the applicant, I prepared my ruling on 18.02.2010. I dismissed the summons for revocation.

The Applicant filed this Application seeking orders that the said Ruling be set aside or reviewed because it contains an error on the face of the record. The error is to the effect that I said that the Applicant bought the land from the petitioner in succession cause No. 5 of 2004 and not from the deceased.

I admit that there could have been an error in that respect Annexure '1N3' does not actually constitute an agreement of sale from the deceased to the Applicant.

I do not wish to delve in to the details of whether there was any sale transaction between the Applicant and the deceased or not.

All I can say however, even if I find that finding to be an error on the face of the record, it would not form any basis for upsetting my ruling. Reason being that a buyer or purchaser cannot cause an otherwise valid grant to be revoked for the only reason that he was not recognized in the proceedings. As stated earlier in my ruling, his recourse lies in suing whoever sold the property to him and if such person be dead, then he can only sue the administrator of the deceased's estate.

The fact that I mistook the person who ought to be sued for the recovery of the purchase price, or transfer of the land does not amount into an error that would warrant the setting aside of the Ruling in question. Even if I were to set it aside or review it, the only thing I would change is the person who sold the land but that would not change the essence of the Ruling.

There is no law that says that an alleged purchaser must be included in the application for the grant of letters of administration. I may mention here that there was no proof whatsoever by way of sale agreement, consent to transfer etc between the deceased and the applicant and he had therefore no locus to be included in the succession cause.

His only recourse is to sue the administrator of the estate of the deceased. Revocation of the grant is not a solution as revocation per se will not recognize his rights if any on the estate of the deceased.

Accordingly, I find no 'merit' on the Application dated 6.03.2010. The same is hereby dismissed with costs to the Respondent.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 14th day of October 2010.

In presence of:- Mr. Muraguri for Applicant. Applicant also present.