

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 2095 of 1994

IN THE MATTER OF THE ESTATE OF MBAYA MBARIRI – DECEASED

RULING

The Objector withdrew his summons for revocation dated 7th October, 1998 and both parties agreed to determine the summons for revocation dated 24th May, 2001 on submissions to be made on the basis of the affidavits on record.

The case of the objector, in brief, is that he is the only son of the deceased, who died on 25th February 1986. According to him the Administratrix is married to one Ndambiri Bakenge, but on the instigation of her mother Jane Mbaya Mabariri she absconded from her marital home together with her children, to stay on the estate property.

On demise of the deceased, Jane Mbaya Mbarire petitioned for Letters of Administration in Kerugoya Resident Magistrate's court being Succession cause No.37 of 1998. He objected and the petitioner herein was substituted as an Administrator when the said Jane also parted with the world.

Kerugoya court referred the matter to arbitration by consent, of the parties. The arbitrators awarded Jane 8 acres and to the objector 6 acres, from the estate property. The award of the elders is annexed as Ann.NN1. The said order was contested by Jane and by a ruling dated 6th August, 1993 the Learned Resident Magistrate, dismissed her objection. Her contention that she should be given bigger share as she was old and had a daughter, was dismissed.

To circumvent the confirmation of the grant, the Petitioner has filed the present petition and obtained the certificate of confirmation without knowledge and/or consent of the objector.

It is thus contended that the Petitioner misled the court by concealing material fact fraudulently. The objection is contested by the Administrator/Respondent by stating that the Objector is a nephew and has inherited land from his father. It is further contested that the objector never lived on the suit property namely Kabare/Njuku/34 and was given Kabare/Njuku/223 by the deceased. Now this fact is not proved by the Ann. NN 1. It merely shows that the said plot was sub-divided on 22nd March, 1999. It does not show that any of the sub-division was registered in the name of the objector as averred. Moreover, the deceased died on 25th February, 1986 long before the averred sub-division was made in respect of Kabare/Njuku/ 323.

Her averments that she is the registered owner as on 12th August, 1999 and has sub-divided the suit property amongst her brothers and sisters have no bearing on the competence of her filing this cause without mentioning the background and decisions made at Kerugoya court, which is neither controverted nor disclosed.

It does not need a deep consideration of the facts to find that the Administratrix herein has misled the court with stark defiance of the order made by the competent court and concealment of that fact from this court. The Objector's summons for revocation of the grant dated 21st March, 1995 and Certificate of Confirmation dated 6th December 1996 is allowed and I direct that the grant of representation made in favour of the Administratrix and certificate of confirmation dated 6th December, 1996 are revoked.

I hereby direct the Registrar of Lands to cancel the Registration of Title deeds made in respect of

Title Numbers Kabare/Nkiku/1368, 1369, 1365, 1366 and 1367 and restore the original Title Kabare/Njuki/34 in the name of the deceased herein.

I further direct, in view of the old age of this matter that the said original parcel of land be sub-divided into two parts of eight acres and six acres. The six acres be transferred in the name of the Objector Lawrence N. Kiongo and eight acres sub-divided to the children of Jane Mbaya Mbiriri in equal portions.

The parties to bear their own costs.

Orders accordingly,

Dated and signed at Nairobi this 15th day of October, 2008.

K.H. RAWAL

JUDGE

15.10.08