

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Succession Cause 417 of 2004

IN THE MATTER OF THE ESTATE OF JOSEPH GITONGA MIGWI ... DECEASED

MARGARET MUMBI MUTAHI PETITIONER

Versus

RUTH WANJIRU GITONGA

CHARLES WANGAI GITONGA PROTESTORS

JUDGMENT

Joseph Gitonga Migwi Deceased died on 25th December 2002 leaving no will. A petition for Letters of Administration intestate was filed by Margaret Mumbi Mutahi after citing deceased wife, 9 children and one grand son. Petitioner petitioned on basis of being purchaser of ¼ acre of the only property belonging to this estate namely L.R TETU/UNJIRU/552. Grant was issued by the court on 12.8.05 to the petitioner. Petitioner by summons dated 22nd May 2007 filed an application for confirmation of grant. She prayed for the property to be distributed to her 0.25 acres absolutely and to the wife of deceased the balance of the acreage, that is, 3.63 acres.

That application was protested to by wife of deceased and a son Charles Wangai Gitonga. In the affidavit of protest it was deponed that the family of deceased resides on the property. Further to that the alleged sale transaction between deceased and petitioner lacked the Land Control Board consent. The protest was heard by viva voce evidence. Protestor's evidence was by Charles Wangai Gitonga. He said that he got to know petitioner when she filed the present petition. That none of the deceased family members had knowledge of the said sale transaction. However on the death of their father they found a document indicating that their deceased father had sold 50 feet by 100 feet of the property to the petitioner. That agreement was dated 16th March 2002. The agreement showed petitioner paid Kshs.60,000. He confirmed the signature appearing on the agreement was his deceased father's signature. He referred to an acknowledgement of payment showing petitioner paid kshs.10,000, kshs.80,200 and kshs.5,000 but he was of the view that the signature was not one of his deceased father. He also said that the agreement seemed to refer to two different measurements of land that was being bought by the petitioner. That at one point it referred to 50 feet by 100 feet and at another time ¼ acre. He finally said that the Land Control Board had not given consent to the transaction but that the deceased family wished to refund petitioner kshs.60,000. The petitioner in support to her case said that deceased sold to her ¼ acres of the property. He however died before transfer was effected. She said she is a business woman and that the deceased used to attend her place of business and she used to pay him installments of the purchase price. She concluded in examination in chief by saying that she did not want to be refunded the purchase price but that rather she wanted the land she paid for.

In cross examination she confirmed she had never lived on the land and that the Land Control Board did not give their consent to the transaction. The petitioner's claim for the land stated in the agreement of sale is defeated by its lack of consent from the Land Control Board. Section 6 of the Land Control Act Cap 302 states that such transaction;

“is void for all purpose unless the Land Control Board for the Land Control area of division in which

the land is situated has given its consent in respect of that transaction in accordance with this Act.”

That provision of the law seals the fate of the petitioner’s claim. This court cannot give effect to that transaction of sale. On whether the estate owes the petitioner the money paid to the deceased that is a matter to be decided by or an action against the estate.

Accordingly the judgment of this court is that the protestor’s claim succeeds. The petitioner’s application for confirmation of grant dated 22nd May 2007 is dismissed. The court further does hereby revoke the grant issued to the petitioner dated 12th August 2005. A fresh grant shall issue in the names of RUTH WANJIRU GITONGA and CHARLES WANGAI GITONGA. Either party is granted leave either jointly or independently to apply for confirmation of grant immediately, notwithstanding that six months will not have expired. There shall be no orders as to costs.

Dated and delivered this 15th day of December 2008

MARY KASANGO

JUDGE