



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION CAUSE 304 OF 2001.

IN THE MATTER OF THE ESTATE OF KANGETHE MWEGA (DECEASED)

AND

JOSEPH NJUGUNA MUGETHE (PETITIONER)

ORDERS

I have been called upon to give directions in this matter by Counsel for the applicants. After deliberations and consultations, various legal issues have been identified. Counsel agree that I could give directions on the way forward.

The grant of letters of administration to the Estate of Kangethe Mwega were made to his son Joseph Njuguna Mugethe on 17th October, 2002. The same was confirmed on 9.5.2005.

The Administrator proceeded to sell the land to the following, Henry Mugethe Karanja, James Mburu Karanja and John Mburu Karanja whom I shall refer to as the Interested Parties. They obtained title on 16th May, 2006.

On the 17th August, 2006, the Applicant filed a summons for revocation of the grant of probate made to Joseph Njuguna Mugethe. She claimed that the grant was obtained by concealment and without the consent of the other beneficiaries to the Estate.

The Administrator died on the 26th August, 2006. The Applicant filed the present application dated 19th September, 2006 for injunction against the 3 interested parties. Interim orders were granted by this Court. The inter partes hearing is due today after several adjournments previously.

It is common ground that with the death of the Administrator Joseph Njuguna Mugethe, the grant of letters of administration which was confirmed lapsed and stood revoked by operation of the law. The grant was personal to the administrator. If any beneficiary or other party wished to act for the Estate or take any action against an Administrator had to be appointed first to replace the deceased.

At the moment there is no Administrator to the Estate. The grant of letters of administration stands revoked. It follows that there is nothing to be annulled or capable of annulment.

In the absence of any administrator to the Estate of the late Kangethe Mwega, no step can be taken in these succession proceedings.

Apart from the foregoing, it is clear that the interested parties have no direct interest in the Estate of Kangethe Mwega. They are current title holders to a property which was previously registered in the

name of the deceased. They claim they purchased the property lawfully, for valuable consideration and without any knowledge of any defect to the title or otherwise. They have referred to the provisions of Section 93 of the Law of Succession.

I am of the view that the claims and any possible cause of action by the Applicant can only be subject matter of other proceedings. No orders can be sustained against the Respondents in these succession proceedings in the circumstances.

In view of the foregoing, I have no option but to strike out the application for injunction dated 19.9.06. The Court appreciates that the Interested Parties have incurred costs in defending this matter. However, to award costs in this succession cause would be unproductive. No step should have been taken after the death of Joseph until another Administrator had been appointed.

However, it is hoped that the Interested Parties will have comfort in being released from this proceedings in which they should have never been enjoined or orders issued against them. In order to make amends, I do hereby with immediate effect discharge and lift the Interim Orders given on 26th October, 2006.

Orders accordingly.

Dated and delivered at Eldoret on this 26th January, 2007.

M. K. IBRAHIM

JUDGE