



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Succession Cause 1855 of 2004

IN THE MATTER OF THE ESTATE OF DANSON MBUGUA WARIGI – DECEASED

JUDGMENT

The objector Susan Nyambura Mbugua has filed summons for revocation of grant made in favour of Kimani Gachau in Succession Cause No. 39/1998 in the Principal Magistrate's Court, Thika and issued on 24th July, 2002.

I am not certain about the said date of issue of the certificate of confirmation of the grant, because the record of the subordinate court shows that the ruling to confirm the grant of representation was made on 16th August, 2002.

Be that as it may, it is not in dispute that the said Kimani Gachau has claimed Plot No. 21 Gacharage Market being a purchaser thereof. Certificate of confirmation sought to be revoked shows clearly that he has been given that plot only, while the deceased's other property Loc./Gacharage/75 has been shared equally amongst the four children of the deceased from the objector herein (see letter dated 27th January 1998 from Assistant Chief, Gacharage - Mukuria Sub-location filed in the record of the Court file of the subordinate Court).

After the said confirmation, now a co-widow Susan has filed this objection proceedings. She has averred that the Administrator/Respondent is a stranger. She further averred that the deceased herein filed a case in High Court at Nairobi being H.C.C.S. No. 110 of 1977 (Originating Summons) against the Respondent claiming the ownership of the land in dispute.

She also produced a copy of decree issued in pursuance of the judgment delivered by Hancox J. (as he then was) on 1st November, 1982.

I do note that the said decree is not signed or certified and the effort to bring the file of the said case was also futile, due to its old age.

However, I also note that in the replying affidavit sworn by the Respondent on 10th October, 2006 and filed on 12th October, 2006 he has not refuted or even responded to the averments as regards the said case and decree thereof.

I also have a copy of Originating Summons (in Supra) and Affidavit of Facts sworn by the deceased on 17th December 1976 in the said case. It reveals that an agreement was arrived at between him and the Respondent to build a shop and on completion to occupy the same by the Respondent as a tenant on the rent to be agreed upon as well as to credit the expense of the building of the shop by the Respondent from

the said rent. But the Respondent abandoned the work in January 1988 when it was about two feet above the foundation. It was further averred that the claim of the Respondent herein of being a joint lessee of the plot was not tenable in law and fact.

No response to these facts also is made by the Respondent. His assertion in the replying affidavit that he partly developed the plot and the agreement was to transfer the plot in his name are not adequately proved and cannot be accepted as true.

I must admit that the respondent has not taken undue advantage of the non-appearance on the part of the other beneficiaries in the estate. He has also disclosed the names of all the beneficiaries in his petition before the subordinate Court. It is only because of the fact that the documents by the objector as to the existence of the decree and affidavit by the deceased made in aforementioned case are not specifically traversed by the Respondent, I am constrained to accept them on balance of probability.

In the premises I allow the application for revocation of grant dated 17th June, 2004.

The objector shall file a fresh petition before the Court within 15 days from the date hereof including therein all the beneficiaries of the estate, as stated in the original grant by the Respondent

The Respondent be at liberty to get his claim proved.

I do not make any order on costs.

Dated and signed at Nairobi this 23rd day of January, 2007.

K. H. RAWAL

JUDGE

23.1.07