

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 323 of 1993

BENARD KAMAU KIRAGU & 80 OTHERS.....APPLICANTS

VERSUS

NYARUA KIROGO.....RESPONDENT

RULING

The applicants, who are 81 in number, have filed this application under the provisions of **Section 47** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate and Administration Rules** seeking to be enjoined to these succession proceedings as creditors to the estate of Kirongo Njoroge – deceased (*hereinafter referred to as the deceased*). The grounds in support of the application are stated on the face of application. In essence, the applicants are contending that they are purchasers for value without notice of any defect of title No. **Kiambogo/Kiambogo Block 2/460**. They deponed through John Gicharu (*one of the applicants*) that they had purchased portions of the said parcel of land from one Jim Munge Kinuthia who had had the said parcel of land transferred to him by the administrator of the estate of the deceased. The applicants are apprehensive that if the letters of administration which were granted to the petitioner is revoked, then there is a possibility that they would have the agreements of the said parcels of land which were sold to them by the said Jim Munge Kinuthia vitiated. They would thus like to be enjoined in these proceedings as creditors to the deceased estate so that they would protect their interests.

The application is opposed. The petitioner has filed grounds in opposition to the application. He stated that the application was incompetent and an abuse of the due process of the court. He further stated that the applicants ought to file their claim through Jim Munge Kinuthia who is already a party to the succession proceedings and who would therefore protect their interests. The petitioners further stated that if the application is granted, too many litigants would be brought into these proceedings and therefore confuse the issues and delay the just determination of the matters in dispute.

At the hearing of the application, I heard the submissions made by Mr. Kurgat on behalf of the applicants and by Mr. Mburu on behalf of the respondent. The issue for determination by this court therefore is whether the applicants have established a case to enable this court grant the application to enjoin the applicants to these succession proceedings. It is common ground that the applicants purchased parts of the parcel of land known as **Kiambogo/Kiambogo Block 2/460** (*hereinafter referred to as the suit land*) from one Jim Munge Kinuthia who appears to have purchased the same from one David Njuguna Kirongo who is a beneficiary to the estate of the deceased. It is therefore clear that the applicants did not in any way have any dealings with the deceased prior to his death on the 12th of July 1993. The applicants have conceded that they purchased the said parcels of land in the year 2003, ten years after the death of the deceased. They cannot therefore be considered as the creditors to the deceased's estate as envisaged by **Section 66** of the **Law of Succession Act**. In the circumstances of this case therefore, the only remedy available to the applicants (*if they would be aggrieved by the decision of this court once it makes an adverse determination against their interest*), is to file suit against the said Jim Munge Kinuthia and David Njuguna Kirongo.

I agree with the petitioner that the applicants have no claim directly against the estate of the deceased. They are strangers to the deceased's estate. Their claim can only be adjudicated upon if the court makes a determination on who is to inherit the suit land. It is then after the said decision has been made, that the applicants cause of action against either the petitioner or the said Jim Munge Kinuthia and David Njuguna

Kirongo would accrue. The applicants cannot therefore barge into these succession proceedings and seek to have this court determine whether or not Jim Munge Kinuthia had legal capacity to sell the said parcel of land to them. That issue is not a succession issue. When the High Court is hearing succession cases, it determines who the beneficiaries of the deceased estate are, the properties that comprise the deceased's estate and the mode of distribution to be adopted when distributing the properties that comprise the estate of the deceased to the dependants of the deceased's estate.

In the circumstances of this case, the applicants are not claiming that they are either dependants or direct creditors of the deceased before his death. They are claiming that they bought part of a property that has been identified to comprise part of the deceased's estate and whose transfer by a dependant of the deceased's estate to the person who sold them the same is being challenged by some of the dependants. I agree with the petitioner that the **Law of Succession Act** does not envisage a situation where parties who do not fall within the category of persons mentioned in the **said Act**, would apply to be enjoined as parties to the proceedings.

For the purposes of these proceedings, the applicants are strangers. They are busybodies. They have no business seeking to be enjoined in these succession proceedings. They have to await the outcome of the succession cause pending between the disputing beneficiaries of the deceased's estate. In any event, Jim Munge Kinuthia has been enjoined as a party to these proceedings. He will definitely be interested in an outcome in his favour so as to legitimize his transfer of the suit parcel of land to the applicants.

The upshot of the above reasons is that the application by the applicant being misguided is hereby dismissed with costs.

DATED at NAKURU this 28th day of November 2006.

L. KIMARU

JUDGE