



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 172 OF 1993

IN THE MATTER OF THE ESTATE OF M' MUTUNGA M'AMAI (DECEASED)

WILLIAM M' RUKURIA.....ADMINISTRATOR/RESPONDENT

VERSUS

GLADYS NKATHA BUNDI.....INTERESTED PARTY/APPLICANT

RULING

1. The interested party herein filed application dated 4th July 2019 seeking to be enjoined as an interested party to these proceedings. She claimed to be the legal wife of **Samuel Bundi** (now deceased). That before the demise of her husband the Succession cause herein was going on in court awaiting distribution. That Samuel Bundi was given 3.93 Acres from the estate of the M' Mutunga M'Amari in whose these proceedings relate but has since passed away before the distribution was done.
2. The application was opposed by William M' Rukuria Mutungi through affidavit dated 7th October 2019. He claimed that Samuel Bundi does not have an interest in the estate of the deceased, that the agreement between himself and Samuel
3. Bundi was revoked vide affidavit dated 12TH July 2003 to which he had admitted to a claim of a refund of the purchase price vide acknowledgement dated 20th March 2003.
4. On 24th October 2019 both parties agreed to canvass the application through written submissions. Both parties have since filed their submissions which I have duly considered.
5. In her submissions the interested party restated her entitlement of 3.93 Acres of the estate of the deceased, her husband having bought the same from **Peter M' Mbijiwe and William M' Rukuria** (sons of the deceased). She also stated that she had petitioned in Succession Cause No. 66 of 2007 and attached copies to that effect. She also relied on William M' Rukuria Mutungi's admission in his sworn affidavit filed on 27/8/1998.
6. The Respondent submitted that the interested party did not have a locus standi to bring the application since she did not produce the prerequisite letters of administration. That Samuel Bundi was not a direct beneficiary of the estate.

Analysis and Determination

7. I have considered the application and the response by the parties. In the case of **Trusted Society Of Human Rights v Mumo Matemo & 5 others [2014]eKLR**, the Supreme Court held that:

' an interested party is one who has a stake in the proceedings though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.'

8. At this stage of the proceedings this Court has already made a ruling dated 23rd January 2019 distributing the estate of the deceased and thereby granting William M' Rukuria Mutungi 1.60 Acres and the estate of Peter M' Mbijiwe 1.60 Acres. A certificate of Confirmation of grant has already been issued.

9. I have taken into consideration the fact that the Respondent had indeed admitted to having sold the suit premises to Samuel Bundi vide his affidavit filed on 27/8/1998. The Respondent has however since reverted back on this undertaking. What however stands out for this court is the fact that the said parcel of land was sold after the cause of the proceedings in Succession Cause No. 45 of 1974 (to which this cause

relates to). The interested party had sought entitlement by virtue of being a purchaser. Simon Bundi's entitlement only relates to William and Peter hence do not relate to this cause.

10. In **Re-Estate of Christopher Aide Adela (Deceased) (2009) e KLR Rawal** and (as she was then) held:-

“As per my considered view, Section 93(1) of the Act talks of interest for immovable or movable property and Section 93(2) refers to transfer of immovable property. Obviously both provisions talk of different types of transfer and Section 93(2) protects a purchaser of the immovable property only if he was aware of some liabilities or expenses of the estate which are not met or paid and still got the property transferred in his names. The aspect reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated. Reading these provisions in the manner will be commensurate with provisions of Section 23 of the Registered Land Act (Cap 281) or any other provisions of law regarding proprietorship of an immovable property. It shall be a very weak or unfair system of law if it gives a carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal actions prejudicing the interests and rights of right beneficiaries of the estate.”

11. With the interested party's entitlement not arising from the deceased herein it is clear that she cannot be protected by virtue of Section 93 of the Law of Succession Act. Her stake or interest cannot be properly articulated in this proceedings. In all fairness she has a reasonable claim against the two beneficiaries of the estate that can be aptly lodged in the environment and land court.

12. That being said I find that the interested party's application dated 4th July 2019 lacks merit and the same is therefore dismissed with costs to the Respondent.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 6TH DAY OF FEBRUARY 2020.

In the presence of :

C/A: Kinoti :-

Applicant :- Mr Karanja Advocate holding brief for Mr Majani for Applicant.

Respondent:- Mr Murithi holding brief for Murungi for Petition.

HON A. ONG'INJO

JUDGE

Court

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HON A. ONG'INJO

JUDGE