



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

SUCCESSION CAUSE NO. 655 OF 2015

IN THE MATTER OF THE ESTATE OF: PETER ONDELE - DECEASED

GRACE OGADO OUYA.....OBJECTOR

-versus-

JOYCE ONDELE.....CITEE

RULING

1. The parties herein appeared before this Court on 07/12/2016 and agreed to have a Grant of Letters of Administration Intestate for the estate of the deceased herein, **Peter Simon Ondele**, issued in their joint names to be confirmed later.

2. **Joyce Anyango Ondele** through her Counsels filed a Summons for Confirmation of the Grant dated 16/12/2016 on the even date. Directions were taken and the Summons was heard by way of oral evidence. **Joyce Anyango Ondele** (hereinafter referred to as '**Joyce**') testified as the Plaintiff and called two witnesses; **Michael Lumbe Okure (PW2)** who was her brother-in-law and **Charles Samuel Odera Ondele (PW3)** who was the first born to the deceased and Joyce. **Grace Ogado Ouya**, the Protestor herein and hereinafter referred to as **Grace**, testified as the Defendant and called three witnesses; **John Okiro Okiro (DW1)**, **Dastarico Enina Khayali (DW2)** and **Samwel Calvins Bisiesa Kibongo (DW3)**.

3. Through the Summons, Joyce prayed that the sole estate property being the parcel of land known as **Suna East/Wasweta 1/2012** (hereinafter referred to as '**the property**') do wholly devolve to herself. Her witnesses vouched for that position as well. Grace raised the issue of trust; that the property was hers having lawfully purchased the same from a third party and initially registered it in her name before transferring it to the deceased to hold in her trust. She testified that it was for that reason that she placed a caveat against the property. Her witnesses confirmed the position.

4. It is not in dispute that the issue of trust remains the most contentious one and must be settled to determine whether the property forms the estate of the deceased. The parties herein have taken rival and firm positions. The duty of a Succession Court is principally to protect estates of deceased persons which it has jurisdiction over and to oversee the transmission of those estates to the lawful beneficiaries. The duty of the Court to deal with any dispute arising out of that mandate cannot be gainsaid. However, if a dispute arises on the ownership of the land subject of the succession proceedings and/or the declaration of trusts over the land in issue, then such a dispute transcends the jurisdiction of a Succession Court courtesy of **Article 165(5)** of the **Constitution**, **Section 13** of the **Environment and Land Court Act**, No. 19 of 2011 among other relevant legal provisions. It is a dispute which calls for evidence to establish ownership or the existence of such a trust upon which finding a party may be a beneficiary for purposes of the distribution of the estate property before a Succession Court or not. (See the Court of Appeal in **Peter Moturi Ogutu vs. Elmelda Basweti Matonda & 3 others (2013) eKLR**, **Muthuita vs. Muthuita (1982-88) 1 KAR 42** and **Chogera vs. Maria Wanjira Kimani & Others (2005) eKLR**).

5. That is the position in this matter. Therefore, this Court lacks the jurisdiction to determine the issue of whether the deceased held the property in trust of Grace. That core issue must be first determined by the Environment and Land Court before this Court can proceed on with the Summons.

6. Consequently, the following orders do hereby issue: -

(a) This Court has no jurisdiction to deal with ownership and/or the declaration of trust over Suna East/Wasweta 1/2012.

(b) There shall be a stay of any further proceedings in respect to the Summons for Confirmation dated 16/12/2016 pending the determination of the issue of ownership and/or the declaration of trust over Suna East/Wasweta 1/2012 by the Environment and Land Court.

(c) The Protestor shall file and serve the proceedings before the Environment and Land Court within 60 days' failure to which the stay of proceedings shall be automatically discharged and the Summons for Confirmation dated 16/12/2016 shall be fixed for judgment.

(d) The prevailing status quo shall be maintained pending further orders of this Court.

(e) Parties be at liberty to apply.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 12th day of March, 2019.

A. C. MRIMA

JUDGE

Ruling delivered in open Court and in the presence of: -

Mr. Odondi Owino, Counsel instructed by the firm of Messrs. Odondi Owino & Company Advocates for the Plaintiff.

Mr. Agure Odera, Counsel instructed by the firm of Messrs. Agure Odera & Company Advocates for the Protestor/Defendant.

Evelyne Nyauke - Court Assistant