



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 13 OF 2014

IN THE MATTER OF THE ESTATE OF JOSEPHAT WAKHOME NABISWA – DECEASED

TAFROZA MUHONJA ALUNGA.....1ST APPLICANT

WAMALWA WANYAMA CHIBANGA.....2ND APPLICANT

PAUL MWELEZA.....3RD APPLICANT

ERASTUS BARASA.....4TH APPLICANT

MOSES ASICHELE.....5TH APPLICANT

VERSUS

SALOME NELIMA WAKHOME.....1ST PETITIONER/1ST RESPONDENT

JULIANA NALIKA WAKHOME.....2ND PETITIONER/2ND RESPONDENT

RULING

1. There are two sets of applications herein. The first application by the Applicants and filed by M/s B.N. Munialo & Co. Advocate dated 30th January 2017 seeks to have the 5 Applicants considered as part of the beneficiaries of the deceased estate herein. In their affidavit sworn on 30th January 2017 in support of the summons for revocation they have clearly stated that they purchased part of land parcel No. Bungoma/Ndalu/41 from the deceased's son one Patrick Juma Wakhome also deceased.

2. The 2nd application dated 3rd October 2017 by Moses Nduruchi and Christopher Kundu, who are deceased sons seeks to have the grant confirmed on 15th September 2016 revoked for the simple reason that they be enjoined as beneficiaries to the estate and veinly indicates that liabilities to the estate were not taken into account during confirmation.

3. This 2nd application seems to support the earlier application by the purchasers, whom they now consider as purchasers in the estate who were left behind. The affidavit of Moses Nduruchi Wakhome sworn on 3rd October 2017 has annexed copies of Sale agreements between their deceased late brother Patrick Juma Wakhone and the applicants in the application dated 30th January 2017. In essence therefore the applicants herein who are infact beneficiaries of the estate and has each been allotted 5 acres as per the grant herein through the backdoor supported the application by the purchasers.

4. I do not see any merit in the application dated 3rd October 2017. The applicants are not purchasers. They were not left out. The responses by Juliana Naliaka Wakhome vide her replying affidavit sworn on 7th June 2018 states as much. Infact Moses Nduruchi is her son and he cannot purport to state otherwise.

5. All in all, their effort really is to support the purchasers. I shall dismiss the said application for the simple reason that the application dated 30th January 2017 shall squarely determine the issues they seek to address. Had they been left behind, then I would have had to make a decision on the same. Now that they each enjoy 5 acres infact, more shares than the rest, they should led the purchasers fight their own war. The same is dismissed with no order as to costs.

6. Turning now to the application dated 30th January 2017, I have read the same together with the attached annexure, which are sale agreements. The court has equally perused the respondents replying affidavit as well as the written submissions which have all addressed the pertinent issues.

7. What is clear from the application is that the applicants are all purchasers of some portion of the land registered in the name of the deceased herein. They bought the same on various dates and years from one Patrick Juma Wakhome who was the deceased son and who also has since died.

8. They claim that they have been in actual occupation of the suit land. That it was therefore incumbent upon the widows, who are the administrators of the estate to have included them when applying for grant.

9. The Respondents have contested this by stating that the said Patrick Juma Wakhome did not own any land as the land belonged to the deceased and that no letter of administration had been obtained even by Patrick to enable him sell the land.

10. Having heard the parties, it appears at least from the Sale agreements that Patrick Juma Wakhome while alive may have sold the land to the applicants. The attached agreements were made away after the deceased had died. He died on 10/12/1982.

11. If this is the case, then the said Patrick did not have any authority to sell his father's land in the absence of the letters of administrations on the express consent of this court. What he may have done was to intermiddle with the estate of his father. This goes contrary to the provisions of Section 45 of the Law of Succession Act Cap 160 Laws of Kenya.

12. Had the land been sold by the deceased herein, the question of whether they were creditors to the estate would have been considered appropriately. But as it stands, the late Patrick was equally a beneficiary. He did not have capacity to sell or to deal with it in any harmful manner.

13. In humble my view therefore, the applicants should therefore deal with the estate of the late Patrick Juma Wakhome and not the estate of the deceased herein.

14. The application dated 30th January 2017 is therefore dismissed with no orders as to costs. The earlier orders affecting Gilbert Kisangani's portion of 5 acres is hereby set aside.

Orders accordingly.

Delivered, signed and dated at Kitale this 3rd day of April, 2019.

H.K. CHEMITEI

JUDGE

3/04/19

In the presence of:

Munialo for the Applicants

Wanyama holding brief for Samba for Respondent

Munialo holding brief for Otsyula for the Applicants

Court Assistant – Kirong

Ruling read in open court.