



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 212 OF 2014

IN THE MATTER OF THE ESTATE OF KARANI MIGWI (DCD)

FRANCIS P. S. KARANI.....1ST PETITIONER/APPLICANT

DAVID KINYUA KARANI.....2ND PETITIONER/APPLICANT

JUDGMENT

1. This matter relates to the estate of Karani Migwi, deceased.

2. The petitioners Francis P.S Karani and David Kinyua Karani applied for Grant of letters of administration intestate of the estate of Karani Migwi (deceased) which they were granted on 23/10/2014. They proceeded to file an application for confirmation of grant dated 29/05/2015 in which they stated that the deceased was survived by the following dependants;

a) David Kinyua Karani

b) James Gakuya Karani

c) Catherine Kariuko Karani

d) Charles Githinji Mwai

e) Francis Karimi Muriithi

3. They proposed the deceased's estate **L.R No, Inoi/Kariko/2952** be distributed as follows:

- David Kinyua Karani)

- James Gakuya Karani)..... ½ share

- Catherine Kariuko Karani)

- Charles Githinji Mwai)

- Francis Karimi Muriithi)..... ½ Share.

Protestor's case

The protestor Catherine Kariuko Kariuki proceeded to file an affidavit in protest on 24/11/2015. She stated that the deceased was survived by the following;

a) David Kinyua Karani - son

b) Francis P.S Karani - son

c) Catherine Kariuko Kariuki – daughter-in-law

d) James Gakuya Karani - son

e) Stephen Wanjohi Karani - son

f. Nelson Mwangi Karani - son

4. That Charles Githinji Mwai and Francis Karimi Muriithi are not beneficiaries and are total strangers to the estate but buyers. She proposed that **L.R No, Inoi/Kariko/2952** be distributed among her listed beneficiaries in equal shares.

Petitioner's case

They did not file any response.

5. During the hearing, the protestors testified that Charles Githinji Mwai and Francis Karimi Muriithi were buyers and not beneficiaries of the estate.

6. The petitioner Francis P.S Karani stated that the protestor is the wife of his late brother Benson Karimi and that their father had showed them where to use the land. After his demise, Stephen Wanjohi Karani, Nelson Mwangi Karani and himself decided to sell their portion to Charles Githinji Mwai and Francis Karimi Muriithi. In order to avoid going for transfer, they chose to include their names.

The issue is Whether the Charles Githinji Mwai and Francis Karimi Muriithi are dependants of the deceased

The petitioners confirmed that they are not dependants of the deceased's estate and are only buyers. However, under **Section 82 of Law of Succession Act**, the personal representatives shall not sell any of the deceased's estate before confirmation of grant. It states:

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers –

(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best: Provided that—

(ii) no immovable property shall be sold before confirmation of the grant;

The Section is couched in mandatory terms. The Act also makes it an offence to intermeddle with the estate of a deceased.

Section 45 of Law of Succession Act Cap 160 states:

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

7. These matters have been addressed in persuasive decisions by my brother Judges.

In **James Muhu Kanai v Caroline Njeri Ngotho & 2 others [2015] eKLR**

The court stated:

By virtue of Section 79 of the Law of Succession Act, the said property had not vested in the widow as administrator and therefore she was not at the material time a personal representative of the deceased and had no capacity whatsoever to exercise any of the powers set out in Section 82 of the Act, in particular the power to sell estate property. In any event, the property in question was immovable property, which, by virtue of proviso (ii) to Section 82(b), could not be sold before the grant had been confirmed.

The provisions of Sections 45 and 82 of the Law of Succession Act are in mandatory terms. The effect of this then is that the acts of intermeddling cannot be sanitized by acts meant to regularize the unauthorized dealings. These unlawful acts cannot be cured.

Further **In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR**

The court stated:

The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.

In this matter the respondent sold property belonging to a dead person without authority as letters of administration had not yet been made to him. The fact of having petitioned for the letters did not clothe him with any authority. He and Felix Kinuthia intermeddled with the estate, and they no doubt committed an offence under section 45(2) (a) of the Act. It is unfortunate that the prosecutorial authorities do not focus on offences of this kind as prosecutions are hardly ever mounted over them. This explains why property of dead persons is routinely intermeddled with.

8. The dependants dealt with the deceased's estate before letters of administration had been confirmed. **Section 82 of Law of Succession Act** is in mandatory terms '**shall**' therefore the dependants even though selling their shares could not purport to sell it before the grant was confirmed and the sale was null and void ab initio.

9. Since Charles Githinji Mwai and Francis Karimi Muriithi are not beneficiaries of the estate, their names cannot be included in the distribution of the estate. They are strangers to the estate.

Section 38 of the Law of Succession Act provides:-

"Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children."

10. It provides for equal distribution of the estate to the surviving children. This is the mode of distribution proposed by the protestor. I find that the protest has merits. I order that the estate of the deceased comprised in land parcel No. Inoi/Kariko/2952 be distributed to:-

- **David Kinyua Karani**

- **Francis P. S. Karani**

- **Catherine Kariuko Karani**

- **James Karani Gakuya**

- **Stephene Wanjohi Karani**

- **Nelson Mwangi Kani** - in equal shares. The grant shall be confirmed and the estate be distributed.

Each party to bear its own costs.

Dated at Kerugoya this 13th Day of November 2019.

L. W. GITARI

JUDGE