



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

PROBATE & ADMINISTRATION CAUSE NO.125 OF 2014

IN THE MATTER OF THE ESTATE OF JESEKIEL SICHANGI alias

CHESEKWELI SICHANGI.....DECEASED

AND

MARGARET NANGILA CHESEKWEL.....1ST PETITIONER

THOMAS WEKESA LUMBUKU.....2ND PETITIONER

VERSUS

CHWELE FARMERS CO-OPERATIVE SOCIETY.....APPLICANT

RULING

1. The application before Court is by way of summons for revocation and annulment of grant brought pursuant to Sections 45, 55 & 76 of the Law of Succession Act, Rule 44 & 73 of the Probate and Administration Rules

2. Prayers 1, 2 and 3 are spent. For consideration now are prayers 4 and 5, seeking to have the grant issued to Margaret Nangila Chesekwel and Thomas Wekesa Lumbuku on 12th November 2013 revoked and/or annulled and for costs respectively.

3. The application is based on grounds that the Petitioners / respondents obtained the grant secretly without involving the applicant yet they were aware of the purchase by the applicant of a portion of the land subject matter in 2002 and ought to have included the applicant's interest in the Petition.

4. In an affidavit dated 30th September, 2015 Patrick W. Walucho, Chairman of applicant Society averred that the Society bought a portion of Parcel No. Bokoli/Chwele/259 for Kshs.80,000/- from the deceased in 2002 and waited for the deceased to obtain the land Control board consent and sort out other cases he was involved in but the deceased died before transferring the portion they bought and after the demise of the deceased the administrators of his Estate secretly left out the applicant as they distributed the Estate.

5. The application was objected to on behalf of both the Petitioners through an affidavit sworn by the 2nd Petitioner Thomas Wekesa Lumbuku on 4th February 2016 to the effect that the application is made without good faith, the deceased could not have signed the agreement as at 30th of March 2002 he was sick and had lost sight, secondly an earlier agreement referred to of 31st April 1992 was never availed to Court, the applicant has never been in occupation or fenced the land being claimed, the Estate has since been distributed, the Petitioners were not aware of the applicant's interest as alleged, the grant was not obtained secretly as the Petition was gazette and no objection filed, beneficiaries have sold and transferred several portions from the original land which is not in existence and hence the application ought to be dismissed.

6. Each Party has made some points worth noting. On the Petitioners part, it is true that the essence of gazetting the Petition is to make public the application by Petitioners and put on notice all who wish to make a claim against the Estate.

On the applicant's part, it is also worth noting that the Kenya Gazette is not as 'public' as it ought to be. It is an "Elite" document so to speak and read by very few Kenyans and not necessarily out of choice. Can one in rural Kenya easily access the same. The answer is to the negative. This may probably explain why the applicant like many other folks in rural Kenya, do not come across the same and hence the complaint by the applicant that the application was made in secret.

7. The agreement for the purchase of 200ft X 100ft of Bokoli/Chwele/259 was signed on the 30th of March, 2002, the deceased died on the 28th of October, 2002 all this happened 13 years before the applicant moved the Court or made their claim known as no proof was placed before the Court that the deceased children knew about the transaction that took place in 2002.

8. The applicants left the deceased to obtain all relevant documents including the Land Control Board and they cannot be faulted on this it was agreed upon.

The Courts have now held that the Land Control Board consent cannot be a reason used to deny purchasers for value their entitlement see **Macharia Mwangi Maina & 67 Others Versus Davidson Mwangi Kagiri Civil Appeal No.26 & 27 of 2011.**

9. Having stated the above and the fact that no evidence was adduced that the deceased was blind as alleged or the document is a forgery and I decline to find the applicant's claim to be bad.

10. However, since the property was distributed to the beneficiaries on the 10th of December 2014 and it is said that they have since caused further subdivisions and have disposed of substantial chunks, the question is whether the order being sought is efficacious at this stage.

11. In my view revoking and/or annulling the grant will not be reasonable in the circumstances. The order may affect several other parties who may be innocent.

12. In my view the most reasonable way for the applicants to seek recourse is to sue the administrators of the Estate for compensation should the Law allow for the said reason I decline to grant the order sought.

13. Each party to meet their own costs.

DATED and DELIVERED at BUNGOMA this 8th day of February. 2018

ALI-ARONI

JUDGE