



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 130 OF 2013

(Formerly Embu Succession No. 452 of 2011)

IN THE MATTER OF THE ESTATE OF TIOTORA WANJA MWANIKI alias WANJA MWANIKI(DCD)

PAULINE WANGECHI.....PETITIONER

JUDGMENT

Petitioner's Case.

The Petitioner Pauline Wangechi is the administrator of the estate of Wanja Mwaniki (deceased). She states that the deceased sub-divided her land **Ngariama/Ngiriambu/1159** to her 5 children before she died. The suit land was sub-divided into **Ngariama/Ngiriambu/2209, 2211, 2212 and 2213**. That the objector who is a stranger to the estate should stop meddling in her estate and revoke the documents he wrote so that the remaining title **Ngariama/Ngiriambu/2210** be acquired by their rightful beneficiaries. That the beneficiaries have settled on their portions and redistributing the land will cause chaos.

That the objector purchase price was duly refunded to him as per copy of refund note dated 08/04/2008. That the protestor had already gotten 2 acres from the deceased for his assistance being **Ngariama/Ngiriambu/1160**.

Objector's case

The objector Onesmus Chomba Githinji stated that the deceased requested him to pay for education of her son Augelious Mwaniki which he agreed on condition that she sub-divided her land and gives him $\frac{1}{2}$ acres. Written agreement duly executed and witnessed by an advocate is attached. That after Augelious Mwaniki finished his 3rd year, the deceased refused to sub-divide and transfer the land to him and died before doing so.

Annexures;

1. Agreement for educating Augelous Mwaniki after translation states that the objector has agreed to educate him and the deceased to later given him a piece of land. He paid Kshs.5,110/= and balance was Kshs.9,890/=. This agreement has not stated the size of the acre. It says the price per acre is Kshs 30,000/-.
2. As per the sale agreement dated 07/05/1987 between deceased and protestor for purchase of $\frac{1}{2}$ acre of **Ngariama/Ngiriambu/1159**. Deposit of Kshs.5,110/= paid and balance of Kshs.9,890/= to be paid after the Land Control Board gives consent.
3. Acknowledgement dated 15/06/1987 for Kshs.2,045/= in respect of **Ngariama/Ngiriambu/1159** making total paid to Kshs 7,155/- leaving a balance of Kshs 7,845/-.
4. The note dated 08/04/2008 is handwritten and indicates that the advocate has received a sum of Kshs.9,262/= on **Case No. 108 of 2006** between the protestor and the deceased.

Determination

The objector has stated that the deceased refused to transfer the land to him after Augelious Mwaniki finished his 3rd year Consent of the Land Control Board to transfer $\frac{1}{2}$ acre to the objector was never obtained.

Whether the sale agreement was void for lack of Land Control Board consent

Section 8(1) of the Land Control Act

An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate land control board within six months of the making of the agreement for the controlled transaction by any part thereto:

Provided that the High Court may, notwithstanding that the period of six months may have expired, extend that period where it considers that there is sufficient reason so to do, upon such conditions, if any, as it may think fit.

Section 7 of the Land Control Act

If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to section 22.

Pursuant to the provisions of **Section 6 of the Land Control Act**, there must be consent to transfer. If no consent was obtained, the agreement of the parties became null and void after 6 months, pursuant to **Section 8 of the Land Control Act**. That agreement cannot be enforced and the only remedy for a transaction that has become null and void is for a refund, recoverable as a debt, as provided by **Section 7 of the Land Control Act**.

The land in dispute is Agricultural Land and **Land Control Act** applies to transactions involving the land.

The sale transaction was void for all purposes as no consent had been given by the Land Control Board within the required time. The objector is therefore only entitled to a refund of the purchase price.

Having looked at this agreements, the one education states that the price per acre is Kshs 30,000/-. Simple mathematics will show that the total paid under the document was Kshs 5,110/-. It is not clear what the Kshs 15,000/- was all about. The 2nd agreement dated 7/5/87 was purchase of ½ (half) an acre at Kshs 15,000/-. Clause 4 indicated that the purchaser had paid Kshs 5,110/- leaving a balance of Kshs 9,890/-. This is added on the agreement for payment of school fees. The agreement stated at clause 4 that balance would be paid after the consent of Land Control Board. An acknowledgment dated 15/6/87 shows that the objector paid the deceased 2,045/- making the total paid as Kshs 7,155/- and a balance of Kshs 7,845/-.

Having considered these documents, it is clear that it is the objector who was left with unpaid balance for the purchase of half an acre. It would seem the parties had a case at Embu and the deceased paid Kshs 9,262/- DW-2- has stated that it was a refund of the purchase price.

I find that the objector did not pay the total purchase price for the one acre he was claiming from the deceased. The money he paid was refunded to him through his advocate. He therefore did not have a claim against the Estate of the deceased. As I have stated, the agreements do not entitle him to land as the agreements were null and void for want of consent of Land Control Board. A void agreement is not enforceable and no rights legal or equitable can be derived from such a contract. The claim of half acre from the estate of the deceased has not been proved by the objector.

This is a succession matter which relates to the administration and distribution of the Estate of deceased person. The objector was not claiming land as a beneficiary. He stated that he was in court as a buyer. He further stated that the deceased owed him money. He has failed to prove that he was owed any money by the deceased.

Any the case debt owned by the deceased to any person is recoverable from the estate as a civil debt. **Section 83(d) of the Law of Succession Act** imposes a duty on the personal representatives to ascertain and pay the debts. The section provides:-

“to ascertain and pay, out of the estate of the deceased, all his debts;

The Petitioners have proved that the Objector was given land measuring two acres, that is Land parcel No. Ngariama/Ngiriambu/1160. This is not denied and is not in dispute. The protestor removed the caution which he had placed on the land Parcel No. Ngiriama/Ngiriambu/1159 and the land was sub-divided. The protestor was given land parcel No. Ngariama/Ngiriambu/1160 for the assistance he had given in paying school fees. The petitioners have proved that the balance of Kshs 9,980/- was paid objector's Advocate on 8/4/2008. He acknowledged receipt and stamped. The objector has therefore no valid claim against the estate of the deceased. He is a stranger to the estate of the deceased and not a beneficiary.

The objector had sworn false affidavits claiming to be one of the beneficiaries, affidavit sworn on 15/7/2011. Such averment is fraudulent and not made in good faith. The affidavits by James Gachoki Mwaniki shows that deceased subdivided land parcel No. Ngariama/Ngiriambu/854 resulting in 1159 & 1160. The parcel No. Ngiriama/Ngiriambu/1160 was transferred to the objector. This shows that the objector obtained land from the deceased in her lifetime. He has no claim on the estate of the deceased. The objector failed to disclose how he got the land. I must therefore believe the petitioners that he was given the two acres to cover the assistance he gave in paying school fees for the child of deceased.

In Conclusion:-

1. The objector has no lawful or valid claim in the estate of the deceased.
2. The objection is dismissed.

3. The cautions placed on the land parcels forming the estate of the deceased be removed forthwith.

4. The remaining land parcels to go to the rightful beneficiaries. The objector to execute the necessary documents and if he fails the Executive Officer is authorized to sign on his behalf.

5. Costs to the petitioners.

Dated at Kerugoya this 8th day of November 2018.

L. W. GITARI

JUDGE

Read out in open court, Mr. Kariithi for Objector, Petitioner present.

C/A:- Naomi this 8/11/2018.