



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**SUCCESSION CAUSE NO. 3 OF 2009**

**IN THE MATTER OF THE ESTATE OF NELSON WAMBUA MASILA – DECEASED**

**BEATRICE KAVATA WAMBUA.....APPLICANT**

**-VERSUS-**

**MARGARET K. MBALUKA.....1<sup>ST</sup> RESPONDENT**

**ALI WAMBUA MASILA.....2<sup>ND</sup> RESPONDENT**

**KINGSTONE K. MULEWA.....INTENDED INTERESTED PARTY**

**AND**

**MUTISYA MUINDI NZUSYO.....OBJECTOR**

**RULING**

The application dated 24/10/2016 seeks to have the applicant, Kingstone Kasena Mulewa be enjoined as an interested party in this succession cause: it is supported by his affidavit sworn on the same date. The objector filed grounds of objection dated 3<sup>rd</sup> November, 2016. Counsels for both parties agreed to determine the application by way of written submissions. None of the advocates filed written submissions.

The basis upon which the application is made is that the applicant bought Plot number 54 Ngalla Phase 3, Malindi town on 24<sup>th</sup> September 2016. He bought the property from Margaret Kavisa Mbaluka and Ali Wambua Masila who are the deceased's beneficiaries. He was shown a certificate of confirmation of grant issued on 3<sup>rd</sup> July 2009.

The basis of the objection is that the motion is incompetent, bad in law and an abuse of the court process. It is also stated that the applicant lacks locus to be enjoined in this succession cause and that if the application is granted, it will give legality to intermeddling with the deceased's estate. The proposed interested party has no claim whatsoever in the estate as he is not an heir, dependent or objector. The property had already been sold to another person who in turn sold to Mutisya Muindu Nzusyo. Mr. Wambua Kilonzo, counsel for the objector submitted the grant had been revoked when the objector bought the land. There is a claimant who bought the land from the deceased. This claimant has a right to demand his share from the estate. Allowing the applicant to be enjoined as a party will amount to intermeddling with the deceased's estate.

I have read the proceedings herein. The deceased died on 14<sup>th</sup> September, 1990. Margaret Kavisa Mabluka and Ali Wambua Masila petitioned this court for letters of administration intestate. A grant was issued on 27<sup>th</sup> March, 2009 to Margaret Kavisa. The grant was confirmed on 3<sup>rd</sup> July 2009.

On 17<sup>th</sup> February, 2015 Beatrice Kavata Wambua filed an application seeking the revocation of the confirmed grant. Beatrice made the application in her capacity as the deceased's widow. The proceedings show that Margaret Karisa Mbaluka is also one of the deceased's widows. This court did revoke the confirmed grant on 11<sup>th</sup> May 2015 and made an order that a fresh grant be issued in the joint names of Beatrice Kavata and Margaret Karisa. That being the case, it follows that by 27<sup>th</sup> September, 2016 when the applicant alleges to have bought the property, the grant issued on 3<sup>rd</sup> July 2009 had already been revoked. Section 82 (b) (ii) provides that no immovable property shall be sold before confirmation of the grant. The grant herein was revoked and therefore those who sold to the objector had no capacity to do so as the fresh grant is yet to be confirmed.

The objection by Beatrice is to the effect that other family members were not involved in the petition. There is also indication that plot number 54, Ngala Estate had been sold by the deceased to Peter Kibui who in turn sold it to Mutisya Muinde Nzusyo. The same property is now being claimed by the applicant.

Since the objection has not been heard, it cannot be concluded as of now that the deceased had sold the property to Peter Kibui. That allegation has to wait the full hearing of the objection. The contention that the property was sold by the deceased are yet to be proved. The applicant is equally entitled to make his claim on the property. Upon hearing all the parties, the court will make its decision on both the objection and the applicant's claim. The original petitioners maintain that the deceased did not sell the property to Peter Kibui. The property was included in the initial certificate of confirmed grant as part of the deceased's estate. It is clear that the applicant was shown the grant that had been revoked by the sellers of the property. Locking him out of the proceedings would amount to condemning him unheard. The mere fact that the applicant is allowed to participate in the proceedings does not mean that he will be adjudged to be the owner of the property. The court will have to hear his claim and make its own decision. He has a right to claim that he was not aware that the grant had been revoked. It is those who sold to him who can be held to be the ones intermeddling with the deceased's estate. The applicant alleges that he has developed the property and those allegations cannot be summarily dismissed. I have observed that the two widows are quite elderly and there is need to hear the dispute on priority basis.

The overriding objective is to determine the dispute in relation to the estate including the ownership of plot number 54, Ngala Estate. The applicant is claiming ownership to that property. His participation in the proceedings is quite crucial as his claim is a liability to the deceased's estate. It does not matter whether he is the deceased's heir or dependant. The court can hear evidence from the beneficiaries to the effect that they sold the property to the applicant. Therefore, even if the applicant does not participate in the proceedings, he can also be called as a witness by one of the beneficiaries. There is no guarantee that the alleged person who bought from the deceased will be adjudged to be the owner of the Ngala Estate Property. There are two competing claimants and each has to be heard so that the court can rule on the issue. Even if the basis of the sale was on the nullified grant, that cannot exclude the applicant from telling the court his basis of the claim.

In the end, I do find that the application dated 24/10/2016 is merited and is hereby granted as prayed. The applicant is enjoined in this cause as an interested party. There shall be no orders as to costs.

**Dated and delivered in Malindi this 7<sup>th</sup> day of March, 2017.**

**S. CHITEMBWE**

**JUDGE**