



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE AND ADMINISTRATION NO. 410 OF 2011

IN THE MATTER OF THE ESTATE OF CHRISTOPHER MENYA OJUMA.....DECEASED

AND

EVERLYNE AUMA OCHUNGA.....PETITIONER/RESPONDENT

VERSUS

DIXON ODABA.....OBJECTOR/APPLICANT

RULING

(Summons for revocation of grant dated 9th January, 2017)

1. Through the application dated 9th January, 2017 the Applicant/Objector (Dixon Odaba) seeks to revoke the grant of letters of administration confirmed to the Respondent/Petitioner (Evaline Auma Ochunga) on 13th October, 2014 in respect to the estate of Christopher Menya Ojuma who passed away on 27th October, 2003. Christopher Menya Ojuma shall henceforth be referred to as the deceased. The application is supported by the grounds on its face and a supporting affidavit sworn by the Applicant on the date of the application.
2. The Respondent opposed the application through a replying affidavit sworn on 28th February, 2017 and filed in Court on 13th March, 2017.
3. The Applicant's case is that through a sale of land agreement dated 25th October, 2005 he bought a piece of land measuring 110 feet x 110 feet for Kshs.120,000.00 from the husband of the Respondent being his beneficial interest in L.R. No. Bukhayo/Bugengi/7038 which was then registered in the name of his brother the deceased herein. Upon purchase of the land he took possession of the same and had quiet enjoyment of his property.
4. It is the Applicant's case that following the demise of the Respondent's husband, the Respondent commenced these proceedings in respect of the estate of the deceased with a view to inheriting her husband's share of L.R. No. Bukhayo/Bugengi/7038.
5. It is the Applicant's case that he has developed his portion of land but the Respondent had nevertheless sub-divided the land into four pieces with a view of defeating his interest.
6. The Applicant reads fraud in the sub-division carried out on 3rd October, 2005 in respect of L.R. No. Bukhayo/Bugengi/7038 in that the deceased who passed away in 2003 was alleged to have signed a

mutation form on 3rd October 2005.

7. It is the Applicant's claim that the Respondent concealed material facts from the Court by failing to disclose all the beneficiaries entitled to share the estate of the deceased.

8. In her reply, the Respondent averred that the deceased was the brother of her husband Romanus Juma Acheda. The deceased was the registered holder of L.R. No. Bukhayo/Bugengi/7814 which had been allocated to her late husband by her father-in-law. At the time her husband passed away on 9th January, 2011, the parcel of land had not been transferred to his name.

9. It is the Respondent's averment that she lived on the said parcel of land from 1999 when she got married to her late husband.

10. She averred that upon the demise of her husband, she commenced these proceedings in respect to the estate of the deceased in order to inherit her husband's entitlement being L.R. No. Bukhayo/Bugengi/7814. She obtained a grant of letters of administration which was confirmed on 13th October, 2014.

11. It is her case that on the strength of the grant she sub-divided L.R. No. Bukhayo/Bugengi/7814 into three parcels. She had parcel No. Bukhayo/Bugengi/11700 registered in her name to hold in trust for her children. L.R. No. Bukhayo/Bugengi/11699 was registered in the name of Adam Khamis Jarden and L.R. No. Bukhayo/Bugengi/11701 was registered in the name of Everylne Achonha. According to her, these two were purchasers who had bought portions of the land during her husband's lifetime.

12. The Respondent denies transacting any business in regard to L.R. No. Bukhayo/Bugengi/7038 in respect of which the Applicant has brought his objection proceedings.

13. The Respondent discloses that sometime in 2013 the Applicant entered upon her parcel of land No. Bukhayo/Bugengi/11700 wanting to evict her and her children on the ground that he had bought the said parcel of land. As a result, she filed Busia ELC No. 92 of 2013 against him. It is her case that the Applicant does not have a purchaser's interest on her land and neither does he occupy the land.

14. The Respondent denied concealing material facts from the Court and insisted that the Applicant was well aware of these succession proceedings and never filed any objection to the same. She urged the Court to dismiss the summons and award her costs.

15. From the pleadings filed in Court, it emerges that the Respondent is the wife of Romanus Acheda Juma who passed away on 9th January, 2011. The late Romanus Acheda Juma was the brother of the deceased who passed away on 27th October, 2003.

16. The Applicant's case is that the Respondent's husband sold him a portion of L.R. No. Bukhayo/Bugengi/7038 on 24th October, 2005. It is his position that although the said parcel of land was registered in the name of the deceased herein, the Respondent's husband had a share in that parcel of land.

17. The Respondent denied knowledge of such a transaction between her husband and the Applicant. It is her case that her husband's parcel of land was indeed registered in the name of her deceased brother-in-law but the parcel of land was L.R. No. Bukhayo/Bugengi/7814 and not Bukhayo/Bugengi/7038.

18. A perusal of the documents exhibited by the parties show that initially the land that was registered in the name of the deceased was Bukhayo/Bugengi/7038. On 3rd October, 2005 the parcel of land was sub-divided into four pieces: Bukhayo/Bugengi/7814, Bukhayo/Bugengi/7815, Bukhayo/Bugengi/7816 and Bukhayo/Bugengi/7817. Of interest to this Court is Bukhayo/Bugengi/7814 which was registered in the name of the deceased. When the Respondent's husband died in 2011 the Respondent commenced these proceedings and went after L.R. No. Bukhayo/Bugengi/7814 which according to her, was being held by

the deceased in trust for her husband.

19. The Respondent's current title (Bukhayo/Bugengi/11700) has roots in L.R. No. Bukhayo/Bugengi/7038 to which the Applicant lays claims. The Respondent has denied knowledge of any sale agreement between her late husband and the Applicant. No evidence has been adduced to show that the Respondent was aware of the agreement between her husband and the Applicant. This is a matter that can only be resolved through *viva voce* evidence and production of documents. The forum for such litigation is the Environment and Land Court.

20. As matters stand before me, there is no evidence that the Respondent concealed any information from the Court when she applied to administer the estate of the deceased herein. Whether the Applicant is in occupation of the land in question is a matter to be dealt with by the Court hearing the land dispute.

21. Considering the evidence placed before this Court, I find that the Applicant's case has no merit. His application is dismissed with costs to the Respondent.

Dated, signed and delivered at Busia this 30th day of March, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT