



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 372 OF 2014

IN THE MATTER OF THE ESTATE OF WILLIAM OUMA MAKADU.....DECEASED

AND

GETRUDA ATSIENO OUMAPETITIONER

VERSUS

PETER JOSEPH OSOGO

THEOPHANO OSOGO.....OBJECTORS

VERSUS

EMMANUEL JUMA DUMA

AUMA AKUMU ODUKE.....INTERESTED PARTIES

RULING

1. This is a determination to The Objection by Peter Joseph Osogo and Theophano Osogo (jointly the Objectors) to the making of Grant of Representation to Getrude Atsieno Ouma (The Petitioner) to the Estate of William Ouma Makadu (The Deceased).

2. The claim by the Objectors is that vide a sale agreement dated 21st June 2012 Emmanuel Juma Ouma and Auma Akumu Oduke (jointly the Interested Parties) sold to them 2 acres of land in Bulemia/Bunyala/476. Auma Akumu Oduke is a wife to the Deceased while Emmanuel Juma Ouma is one of his sons. That parcel of land comprises part of the Estate of the Deceased herein. The Objectors are desirous that this purchase be recognized and they be included as buyers in the Succession Cause. The Objectors support their claim by arguing that the Beneficiaries and the Petitioner have sold various portions of that land to other 3rd Parties who have been listed in the Petition in the liabilities section and that they should be not be treated differently.

3. The Petitioner herein does not recognize the Objector’s claim and in a Replying Affidavit sworn herein on 29th April 2015 depones as follows:-

7) That the Objectors’ claim in this cause are misdirected and they ought to be properly directed after the beneficiaries (sic) get their shares.

4. The Deceased herein died on 19th April 2005. Todate there is no Confirmed Grant in respect to the

Estate. And so if it were true, as alleged by the Objectors, that the Interested Parties sold 2 acres of Estate land to them and that the Petitioner is selling Estate land to other Third Parties, then the sales are in contravention of Section 82(b)(ii) of The Law of Succession Act which bars the sale of immovable property of a Deceased Estate before Confirmation of Grant. For the Objectors to ask this Court to uphold this purported purchase would be to ask the Court to give its approval to a transaction that contravenes an express provision of Statute. And it matters not that the Petitioner and Beneficiaries recognized some of the sales made. All are unlawful.

5. In any event, as correctly submitted by Counsel for the Objectors, if the Objectors have a good and valid claim, then they should seek to enforce their claim against the Deceased Estate in a civil suit before the Environment and Land Court.

6. The Objection of 23rd October 2014 lacks merit and is hereby dismissed with costs.

Dated, signed and delivered this 1st day of February 2016.

F. TUIYOTT

J U D G E

In the presence of :-

Oile- C/Assistant

Wanyama- For Petitioner

Makokha h/b for Ochwa- for the Objectors

Majani H/b for Momanyi - for the Interested Parties