



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 365 OF 2010

IN THE MATTER OF THE ESTATE OF PAUL MUYUMBA LIRANGULA ...DECEASED

BETWEEN

LUKA KHAYUMBA SHIVACHI.....PETITIONER/RESPONDENT

AND

LUKA KASIBWA KHAGALI.....OBJECTOR/APPLICANT

J U D G M E N T

Introduction

1. Paul Muyumba Lirangula the deceased herein was presumed dead by this Court on the 26/11/2009 and leave granted to Luka Shivachi Khayumba to apply for grant of representation in respect to his estate. The deceased was the proprietor of land parcel No. Isukha/Shiswa/635 herein after referred to as the “suit land”. On the 17/11/2010 Grant of Letters of Administration Intestate were issued to the Petitioner Luka Khayumba Shivachi.

Summons for revocation of Grant

2. The objector then filed summons for revocation of the grant on the 11/05/2011. He prayed for orders;-

i. That the Grant of Letters of Administration granted to the Petitioner on the 15/11/2010, be annulled and/or revoked.

ii. That the Grant be issued to the Objector jointly with the Petitioner.

iii. That the Objector’s names be included in the liabilities section of the Succession proceedings

3. The Objector claimed that the Petitioner failed and/or omitted to include his name as one of the beneficiaries and/or dependants of the estate of the deceased, and that the Grant was obtained fraudulently by the making of a false statement and by concealment from Court of material facts.

4. The application is supported by the Objector’s affidavit. He explains how he bought 1 ½ acres out of L.R. No. Isukha/Shiswa/635 from the deceased in 1986. He has annexed copy of the agreement “LK4” as proof of the transaction and adds that while the deceased was alive he(Objector) lived peacefully on the said land as he waited for the deceased to effect the transfer of the 1½ acres to him.

5. The Objector also avers that since the deceased was jointly registered together with his brother indeche

Lirangulu also deceased as the proprietors of L.R. No. Isukha/Shiswa/635, the deceased herein had to file a succession cause in respect of his brother's estate to enable him to continue with the transfer. The deceased accordingly filed the succession cause in respect of his brothers estate vide Kakamega Succession Cause No. 236 of 1990 and included the objectors name as one of the beneficiaries in the liabilities section. See annexures "LK5" and "LK6". Unfortunately the deceased herein Paul Lirangulu disappeared in 1993 and has never been heard of or seen since, thus the transfer process stalled.

The objector has also explained the difficulties he has had with the Petitioner and, his brother Charles Murumbutsa and the cases they have filed in Court with regard to the deceased's estate and his stay on the suit land. He claims that the Petitioner did not prosecute the case he filed against him and secretly moved the High Court and filed this particular Succession case without informing him, hence this objector's claim to a portion from the suit property herein Isukha/Shiswa/635 which he claims to have bought from the deceased.

The Response

7. On the 3/11/2011 the Petitioner responded to the application for revocation. He swore an affidavit wherein he deponed that the Objector/Respondent could not have bought one and half acres of the suit land since the Land measures only 1.08 acres. He adds that if at all the Objector/Respondent entered into a written agreement with the deceased herein, he did not comply with the six (6) months rules to attend the Land Control Board to obtain consent for sub-division and transfer and that in any event there was no consent from the Land Control Board. That the lack of land Control Board consent made the sale redundant and not capable of legal completion. He claims that the sale agreement entered into by the deceased before succession amounted to intermeddling with the estate of the deceased contrary to Section 45 of the Law of Succession Act.

8. He further adds that the Objectors claim over the deceased's estate is purely Civil and that he can only be refunded the purchase price if it is proved that he paid money to the deceased.

9. The Petitioner has also denied the allegations that the Objector was using the suit land peacefully with the consent and permission of the deceased. He claims that Kakamega Succession Cause No. 236 of 1990 was fraudulent and it abated on the death of the Petitioner. He admits that he did not include the Objector in this Succession Cause because he is not a blood relative to the estate and has no legal or discernable interest to the suit land. He maintains that he followed the laid down procedure in filing the cause herein and the objectors consent was not necessary. He prays that the application be dismissed, caution lifted so that succession and registration can proceed for the benefit of the estate of the deceased and to meet the ends of justice.

10. The case was canvassed orally with the Petitioner and objector as the only witnesses.

Determination

11. The Court asked the parties to file their written submissions but it is only the Petitioner who complied. This Court has keenly considered the pleadings on record and also carefully read through the oral submissions.

12. The suit land herein L.R. No. Isukha/Shiswa/635 was owned by the deceased herein jointly with his brother who is also deceased. The brother to the deceased Indeche Lirangula was the first one to die and therefore the deceased herein could do nothing with the suit land before obtaining Letters of Administration for his brother's estate.

13. The objector claims to have bought the suit land from the deceased and that he was waiting for the deceased to transfer the same to him, but the deceased could not transfer the suit land to the Objector because he (deceased) had no Letters of Administration for the estate of his brother with whom he jointly owned the suit land.

14. I note from the evidence that money was exchanged and agreements entered into before Letters of Administration for Indeche Lirangula were obtained. In my considered view, the dealing between the deceased and the objector amounted to intermeddling which is a criminal act as provided under Section 45 of the Law of succession Act Cap 160.

15. It is unfortunate that the objector used the suit land herein for some time and had to go through what he went through with the Petitioner and his brother. But as it is required in determining the issues as to whether the objector is a liability of the deceased estate, this court is always guided by the provisions of the Law of Succession Act Cap 160.

16. I find that the Objector, apart from intermeddling with the estate of the deceased, did not obtain the requisite consent from the land Control Board for the land to be transferred to him. Again the land could not be transferred to him because the deceased herein did not have Letters of Administration for his brother.

17. From the observations above, I find that the Objector cannot claim to be a beneficiary to the deceased estate herein. He cannot therefore be included in this Succession as a purchaser of the deceased's estate. There is no justification for such inclusion.

18. The upshot of all the above is that the application dated 9/05/2011 is dismissed with costs to the Petitioner. The grant made to the Petitioner LUKA KHAYUMBA SHIVACHI on 15/11/2010 is therefore confirmed and the whole of Land Parcel Isukha/Shiswa/635 is to be administered by the Petitioner.

19. The Objector is at liberty to seek redress in the Civil Court for recovery of any moneys paid to the deceased estate herein for the alleged purchase of 1½ acres of the suit land.

Orders accordingly

Judgment delivered dated and signed in open court this 1st day of September 2016

RUTH N. SITATI

JUDGE

In the presence of

Mr. Nyikuli h/b for Mr. Elungata.....for Objectors

Mr. Aburili h/b for M/S Andia.....for Petitioner

Mr. Lagat.....Court Assistant