



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

SUCCESSION NO. 133 OF 2011

IN THE MATTER OF THE ESTATE OF NYAGA RUBIRUTHI (DECEASED)

CATHERINE CIANGAI NJOKA.....PETITIONER

VERSUS

ANYES CHUKA NJOKA.....PROTESTOR

AND

MARY NJOKA NYAGA.....OBJECTOR/INTERESTED PARTY

RULING

1. This is an application by the objector/interested party that he is a beneficiary in the estate of the deceased. Her right to be included as a beneficiary in the estate of the deceased is based on what may be termed as a purchaser's interest in the suit property. According to her, the deceased sold to her a half an acre of land parcel No. Kyeni/Mufu/4730 and had not effected a transfer to her before he died.

2. After the petitioner filed an application for confirmation of grant, the objector/interested party filed her application through his counsel Mr Mogusu. The application is based on her affidavit of protest against confirmation dated 15th July 2015. In her 10 paragraph affidavit of protest, the objector/interested party has deponed to the following matters amongst other alleged facts. She has deponed that on 14th September 2007 the deceased sold to her a half an acre of the suit land. She has further deponed that the deceased died before having the land transferred to her. Additionally, she has deponed that the petitioner who, is the wife of the deceased is aware of the said sale as she is the one who acknowledged the final payment of the purchase price.

3. Furthermore, the objector/interested party has deponed that she requested the petitioner to file a succession cause so that she could transfer the said half an acre to her and kept on promising that she was going to file the succession cause. She has also deponed that after realizing that the matter was taking too long, she decided to file a citation being succession cause No. 213 of 2014 at the registry in Embu High Court. After filing the citation she realized that the petitioner had secretly filed a succession cause without her consent.

4. The petitioner has filed a ten paragraph replying affidavit in opposition to the application of the objector/interested party. She has deponed amongst other matters that she is not aware of the alleged sale of the suit land by her deceased husband to the objector/interested party. Finally, she has deponed that the objector/interested party is not a beneficiary of the estate of the deceased and that it is for that reason that the objector/interested party is not listed as a beneficiary by the petitioner.

5. On 29th September 2016, counsel for both parties agreed to dispose of this application by way of written submissions. Thereafter Mr Kamunyoru for the petitioner filed and served his submissions dated 26th October 2016 upon counsel for the objector/interested party. I have considered the written submissions of counsel for the petitioner.

6. Mr Mogusu for the objector/interested party has not to date filed any submissions.

7. In the light of the affidavit evidence of both parties, the main issue for determination is whether the deceased husband of the petitioner sold a half an acre of the suit land to the objector/interested party.

8. I find from the affidavit evidence of both parties that the objector/interested party has not produced any document to show that the deceased sold to her part of the suit land. I find from her evidence that she failed to produce any document to show that the deceased had intended to transfer the half an acre of the suit land to her following what she has deponed to as a sale to her of part of the suit land.

9. In the circumstances, I find that she has failed to discharge the burden of proof on a balance of probabilities that there was a sale of a half an acre to her by the petitioner's husband.

10. The upshot of the above is that her application is dismissed with no orders as to costs.

RULING DELIVERED, DATED and SIGNED in open court at **EMBU** this **6th** day of **DECEMBER 2016**.

In the presence of Mr. Kamunyoru for the petitioner and in the absence of Mr. Mogusu for the objector/interested party.

Court clerk Njue

J.M. BWONWONGA

JUDGE

06.12.16.