



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 3 OF 2000

IN THE MATTER OF THE ESTATE OF RAPHAEL MANYURU (DECEASED)

BETWEEN

JOSEPH NYONGESA MANYURU.....PETITIONER

VERSUS

SAFERIO MANGENI.....OBJECTOR

AND

FREDRICK EMOJONG IDIAMA.....INTERESTED PARTY

RULING

1. Saferio Mangeni who has styled himself as the Objector is displeased that he was excluded from the list of Beneficiaries in the Grant that was confirmed herein in respect to the Estate of Raphael Manyuru (**the Deceased**) on 4th May 2001 and has brought a summons dated 4th August 2008 for Revocation of the said Grant.
2. Although the Summons for Revocation was brought for several reasons, the Objector in the end appears to have abandoned all the other Grounds save that his interests were not considered in the confirmed Grant. In the grounds in the face of the summons that grievance is captured as follows:-

“That the grant was also obtained through concealment of material facts from the Court of the Applicant’s interest in the deceased’s estate.

That the Grant as it is and the subsequent Certificate of Confirmation are incapable of proper operation without consideration of the Applicant’s interest in the Estate”.

3. The Application was disposed of by way of *viva voce* evidence. The evidence that is relevant for purposes of resolving the Objectors’ Application is not involved. He stated that he was not present in Court when the Grant was confirmed. He is unhappy that his share of 0.46 Hectares was given to Fredrick Emojong Idiama (**Interested Party**). He says that he sold to the Interested Party 0.5 Acres and not 0.46 Hectares (approximately 1.1 Acres). That it was therefore wrong for the Petitioner to exclude him completely as a Beneficiary. Although he was aware that there was a written agreement dated 5th November 2002 which showed that he had sold 0.46 Hectares being his entire entitlement in the Estate to the Interested Party, he insists that what he sold to the Interested Party was only 0.5 Acres. The Objector denies ever telling the Petitioner about the said

- sale and denies authorizing him to give his entire share to the Interested Party.
4. The position of the Petitioner is that he was duty-bound as the Administrator of the Estate to distribute it. He stated that at the outset, on presenting the Petition, he included his brother (**the Objector**) as a Beneficiary. That at the stage of Confirmation, he removed his name because the Objector had on a date between the presentation of the Petition and the date of Confirmation sold his share to the Interested Party and had in fact moved away from the land. In his stead, Idiama (**the Interested Party**) had occupied that land. He emphasized that save for the dispute between the Objector and the Interested Party there was no other dispute in respect to the distribution of the Estate.
 5. This Court restrains itself from examining the sale transaction entered between the Objector and the Interested Party because, as correctly pointed out by Mr. Omondi appearing for the Petitioner, the dispute between the Interested Party and the Objector as to the acreage of land sold or as to the legality of the sale is not a matter for a Probate and Administration Court. What concerns this Court is whether the Petitioner properly excluded the Objector from the confirmed Grant. It being common ground that the Petitioner and the Objector are brothers and children of the Deceased, both would be dependents within the meaning of section 29 of the Law of Succession Act. Each would be entitled to a portion of his father's Estate.
 6. The unabashed stance of the Petitioner is captured in the following submission made by his Advocate,

“The Petitioner was under duty vide Section 83(f) to distribute the estate. Distribution could only be done to persons who had interest in the estate and that clearly exclude the Objector. In other words the Petitioner did not exclude the Objector from the list of beneficiaries. The objector excluded himself”.

7. From the Court record of 3rd March 2008 it is unclear whether the Objector attended the proceedings in which the Grant was confirmed. However in his oral evidence he stated that he was not before Court. The Petitioner did not controvert this evidence. I take it that the Objector did not attend the confirmation proceedings. The events before those proceedings clearly demonstrate that there was disagreement between the parties as to whether the Objectors interest should be excluded from the Confirmed Grant. In an affidavit sworn on 27th November 2007 the Objector makes this statement:-

“3 That indeed I bought 0.46 Ha of the deceased's estate from Sefario Mangeni Manyuru, and a written agreement exists as intimated by and exhibited in the affidavit of Joseph Nyongesa Manyuru.

4 That Sefario's efforts to deny me my rightful share is strange given that he received the full purchase price from me”. (my emphasis)

8. Earlier, the Court record shows that on 5th March 2007 the Objector did not attend Court on a day fixed for confirmation. It forced Advocate Onsongo appearing for Petitioner to request and obtain from Court witness summons to compel the attendance of the Objector and two other Beneficiaries.
9. Clearly there was reluctance on the part of the Objector to surrender his entire entitlement of 0.46 Hectares to the Interested Party. For that reason the Administrator to the Estate could not properly exclude the interest of the Objector without his express consent given either in writing or at a Court attendance. It was not the business of the Petitioner to determine that the Objector had sold his entire entitlement to the Interested Party and had thereby excluded himself from the Estate. This Court is not saying that the Interested Party does not have a *bonafide* claim against the Objector, however that contentious claim could not be settled at confirmation proceedings of the Grant of Letters. For this reason this Court holds that the complaint by the Objector is merited.
10. It is clear from the rival evidence that save for the entitlement to the Objector, there is no dispute in respect to the rest of the Estate. It therefore behooves upon this Court to make an Order that will not disrupt the settled position of the rest of the Estate. In discharging it's duties as a Probate

and Administration Court this Court has inherent power to make Orders as would be necessary for the ends of Justice (Rule 73 of the Probate and Administration Rules). Invoking that power, I do hereby Order that the Certificate of confirmation of Grant be amended by deleting the name of Interested Party herein, Fredrick Emojongo Odiama and inserting in its place the name of the Objector, Saferio Mangeni. Any changes effected in the Registry to South Teso/Angoromo/348 or any resultant sub plot from the said parcel of land shall be reversed so that the name of the Interested Party shall be substituted with the name of the Objector.

11. It must be made abundantly clear that the decision of this Court does not authorize the Interested Party to change the status quo in respect to possession of the land. The emerging evidence is that the Interested Party is in use and occupation of the disputed land. The Objector cannot use the order made by this Court to evict the Interested Party. That issue will have to be taken up before another forum.

12. In the nature of these proceedings, I think that there should no Order on costs. I so Order.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED THIS 11TH DAY OF MARCH 2015.

IN THE PRESENCE OF:

KADENYICOURT ASSISTANT

OMONDI.....FOR PETITIONER

N/A.....FOR OBJECTOR

N/A.....INTERESTED PARTY