



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
SUCCESSION CAUSE NO. 157 OF 2012
IN THE MATTER OF THE ESTATE OF
BENARD WAMBOKA KARABA(DECEASED)

NELSON P. KARUGUMI.....PETITIONER

AND

JOSEPHINE WAKERA WAMBOKA.....OBJECTOR

JUDGMENT

1. **JOSEPHINE WAKERA WAMBOKA** the appointed administratrix herein took out Summons for Confirmation of Grant dated 16th January, 2008 to confirm a grant issued on 18th July, 2006 in respect to the estate of **BENARD WAMBOKA KARABA**, her late husband. The Summons for Confirmation was opposed by **NELSON P. KARUGUMI** and **HARRISON MUCHIRA KARIMI** the protestors herein claiming that they have purchasers' interests on the estate.
2. The matter proceeded by way of oral evidence and all the parties to this cause adduced evidence in support of their respective positions.
3. The administratrix testified that she was the only widow to the deceased in this cause adding that the deceased left her and the following children as the only dependants:-
 - i. Janet Njeri
 - ii. Lucy Wangithi
 - iii. Peter Karaba
 - iv. Lydia Wambura
 - v. Sarah Muthoni
 - vi. Ann Wawira
 - vii. Teresia Wakaba &
 - viii. Faith Wangithi

The same information is deponed in her affidavit in support of confirmation of grant sworn on 16th January, 2008. She further added that the estate comprised that property known as **L.R. KABARE/GACHIGI/1336** that measures about three acres. She prayed that the estate be transmitted to her as a trustee to all her children who are dependants in this cause.

4. The administratrix denied any knowledge of interests on part of the estate which the protestors are claiming in their protests. As far as she is concerned the protestors are not family members or dependants to the deceased and cannot claim beneficiary rights on the estate she denied knowledge of agreements exhibited by the protestors which indicated that there were transactions between the deceased and protestors at different times during his lifetime. She responded under cross-examination that at the funeral, mourners were asked by the area chief whether anyone of them was indebted to the deceased or was a creditor and according to her no one came out. She viewed this to mean that the protestors had made up their claims and accused the 1st protestor **NELSON KARUGUMI** of trying to disinherit her by secretly petitioning for letters of administration to the estate of her late husband.
5. The administratrix called one witness (Peter Gituru) who testified as P.W.2 and told this Court that the deceased was his brother in law and was close to him saying that he never heard at any given time that he was disposing his parcel of land or part of his parcel of land. He denied knowledge of any of the agreements shown to him by both protestors' counsels.
6. On his part, **Nelson Patrick Karugumi**, the 1st protestor told this court that he was a purchaser of part of the estate measuring 0.255Ha which he claimed he purchased at a total consideration of Kshs.200,000/-. He produced a written agreement as D. Exhibit, showing that on 30th May, 2001 he paid a deposit of Kshs.46,000/-. He also produced two acknowledgements from the deceased (D.Exhibit 2 & 3) indicating that he in fact overpaid the deceased by Kshs.20,000/- for the said parcel of land.
7. The 1st protestor conceded that the transaction was not approved by Land Control Board as no application was ever made saying that he took the deceased to court when he became reluctant to transfer the parcel of land to him. He produced copies of a plaint and defence by the deceased as D. Exhibits 4 and 5 to show that a civil suit No. **Kerugoya P.M.C.C. No. 89 of 2003** between him and the deceased was filed in court and said that the suit is pending.
8. The 2nd protestor **Harrison Muchira Karimi** on his part staked claim on $\frac{1}{4}$ of the estate also claiming that he had purchased it from the deceased at a total consideration of Kshs.695,500/-. He produced a written agreement between him and the deceased dated 8th March, 2002 as D. Exhibit 5. He told the Court that he paid a deposit of Ksh.200,000 as per the terms of the said agreement and thereafter paid monthly installments of Kshs.50,000/- until the total amount was paid in full. He produced a bundle of acknowledgments by the deceased to demonstrate the fact.
9. I have considered the evidence tendered in this cause both orally and the affidavits sworn by the parties herein. There is no dispute that both the protestors herein have no blood relation to the deceased in this cause. Their protest to the Summons for Confirmation of Grant is based on their respective claims of purchase of part of the estate from the deceased. The evidence tendered shows that both the protestors did not take possession of the parcels they allegedly bought from the deceased. The issue that arises in this matter is whether the protestors can qualify to be considered as beneficiaries or "dependants" within the letter and spirit of **Section 29 (2) of the Law of Succession Act (Cap. 160 Laws of Kenya)**.
10. From the evidence on record as pointed out above, the protestors did not take possession of any part of the estate. They did not get any source of living or income from the estate to claim that they were being maintained by the deceased prior to his death. They are not dependants and cannot be described as such. It is important to note that confirmation of grant is normally done by virtue and in accordance with **Section 71 of Law of Succession Act** and is done to those persons who are beneficially entitled to the estate or a share in the estate. The protests filed herein are not really based on rights to inherit the estate or part of the estate of **BERNARD WAMBOKA KARABA** (deceased).
11. To begin with the 1st protestor, **NELSON KARUGUMI** stated that his protest is based on an agreement entered between him and the late **BENARD WAMBOKA KARABA** the deceased herein which he produced as D. Exhibit 1. The agreement indicates that the 1st protestor purchased $\frac{1}{2}$ acre from the deceased at an agreed consideration of Kshs.200,000/-. The agreement was strenuously contested by the administratrix who denied knowledge of the same. What however, came out clearly from the evidence tendered is that the 1st protestor's claim on the estate is based on a chose in action against the deceased which came about as a result of what the

protestor termed as breach of agreement. He told this court that he in fact filed a civil case against the deceased vide **Kerugoya P.M.C.C. No. 89 of 2003** and produced the pleadings before the lower court as D. Exhibits 4a and 4b. It is apparent from the evidence adduced before this Court that the matter is still pending in that court though in limbo as a result of the demise of the deceased.

12. The 2nd protestor **Harrison Muchira** on his part also claimed that his protest was also based on breach of an agreement which he exhibited as D. Exhibit 5 by the deceased who the 2nd protestor indicated failed to perform his part of the obligation. However, that as it may this Court is a succession court and it deals with testate and intestate succession to the estate of deceased persons. As I decided in the succession cause **No. 128 of 2013** in this Court in the case of **JOYCE WANJIKU MUNA -VS- ALEXANDER MUGWERU GICHUNGE**, this court does not deal with disputes over ownership of land *per se* rather it deals with inheritance rights of parties who claim to be heirs or dependants to deceased persons. The intention of Parliament in enacting the **Law of succession Act (Cap. 160 Laws of Kenya)** on 1st July, 1981 was not to enact a law to deal with land disputes between parties. The preamble of the act is clear on this and it states as follows:-

“An Act of Parliament to amend, define and consolidate law relating to intestate and testamentary succession and the administration of estates of deceased persons - and for purposes connected therewith and incidental thereto.”

13. A succession court is not the right forum for land disputes particularly when the disputes involve 3rd parties and beneficiaries or administrators such as the current situation. Where a person has a claim over a property forming the estate but has no right as a dependant the right course is to take the claim in a separate cause or suit against the administrator/administratrix before a court with the requisite jurisdiction to determine the claim. The Constitution under **Article 162 (2) (b)** established special courts in Kenya referred to as Environment and Land Courts and are mandated under the law (**Section 13(2) of Environment and Land Courts Act**) to *inter alia* deal with disputes over use and ownership of land.

14. This Court finds that the 1st Respondent in filing his protest did in fact abuse the court process since his cause is rightly pending before the lower court for determination. He filed his protest before this Court knowing that the same matter is pending for determination in another court instead of waiting for the process to end and decide depending on the outcome on his next cause of action.

15. This court in the light of the above will not determine the validity or otherwise of the agreements entered between the protestors and the deceased and/or legality of the transactions in so far as laws relating to land transactions is concerned. The same should be canvassed before a court with the requisite jurisdiction. In view of this finding, the less said about the agreements or the transactions the better so as not to cause any prejudice to any of the parties herein.

From the foregoing this Court finds that the protests filed herein have no basis in law and cannot be sustained. The administratrix is right to apply for confirmation of grant as the statutory period is over. This Court finds that the proposed mode of distribution is fair and just as all the dependants are catered for. The grant issued on 18th July, 2006 is hereby confirmed. The property forming the estate which is a parcel of land known as **KABARE/GACHIGI/1336** shall devolve to **JOSEPHINE WAKERA WAMBOKA** who will hold the same in trust of her following children (or dependants):

- i. Janet Njeri Wamboka
- ii. Lucy Wangithi Wamboka
- iii. Peter Karaba Wamboka
- iv. Lydia Wambura Wamboka

- v. Sarah Muthoni Wamboka
- vi. Ann Wawira Wamboka
- vii. Teresiah Wakaba Wamboka
- viii. Faith Wanjiru Wamboka

I make no order as to costs so each party to meet his or her own costs. It is so ordered.

Dated and delivered at Kerugoya this 17th day of July, 2015.

R. K. LIMO

JUDGE

17.7.2015

Before Hon. Justice R. Limo

Court Assistant Willy

Kiragu for 1st Protestor and holding brief for Mwai for 2nd Protestor.

Kareithi for Petitioner present

COURT: Judgment dated, signed and delivered in the open court in the presence of Kiragu for 1st Protestor and holding brief for Igati Mwai for 2nd Protestor and Kareithi for the Petitioner.

R. K. LIMO

JUDGE