



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

P & A NO. 86 OF 2004.

WANYONYI MWASAME NAMUNYU ::::::::::::::: DECEASED.

AND

TERESINA KHISA WANYONYI ::::::::::::::: APPLICANT.

AND

WANYAMA MWASAME NAMUNYU ::::::::::::::: OBJECTOR.

R U L I N G.

The application dated 6th February, 2007, by **Wanyama Mwasame Namunyu**, is for the revocation and/or annulment and/or rectification of the grant of letters of administration issued to **Teresina Khisa Wanyonyi**, on the 20th June, 2005 and confirmed on the 25th May, 2006.

The said grant was issued to the said Tersina Khisa Wanyonyi (herein, the respondent) and Michael Wanyonyi Manyonge.

Land Parcels No. Kimilili/Sikhendu/1033 and No. Kimilili/Sikhendu/1350 were identified as the estate property and were confirmed as such in the certificate of confirmation of grant dated 25th May, 2006.

The certificate also indicated that the two parcels of land were to be distributed and registered in the name of Teresina Khisa Wanyonyi being the widow to the late Wanyonyi Mwasame Namunyu (herein, the deceased) brother to Wanyama Mwasame Namunyu (herein, the applicant)

Apparently, being dissatisfied with the distribution of both parcels of land to the respondent, the applicant filed the present application on the basic ground that the respondent fraudulently and maliciously included the applicant's parcel of land (i.e. parcel No. Kimilili/Sikhendu/1350) as part of the estate of the deceased.

In his supporting affidavit, the applicant exhibited a copy of the necessary title deed issued on the 9th November, 1999 (see, Annexure marked "WMN 1") and in his testimony at the hearing of the application, he reiterated and contended that the material plot No. 1350 belonged to him and not the deceased. He produced the necessary title deed (P. Exh. 1) and the necessary green card (P. Ex. 2) to establish his ownership of the plot to the exclusion of any other person. He contended that the plot is not part of the estate of the deceased and implied that its inclusion as such was fraudulent. He therefore prayed for the revocation of the grant issued to the respondent and another in as much as it includes plot no. 1350 as part of the estate of the deceased.

Alternatively, the applicant prays for a rectification of the said grant by removal and/or excluding the said

plot No. 1350 from being part of the deceased's estate and hence out of reach of the respondent.

In her opposition to the application, the respondent filed a replying affidavit dated 11th October, 2007 in which she contends that the grant of letters of administration respecting the estate of her late husband was obtained properly in accordance with the law and that she is the “bonafide” owner of the said plot No. 1350, by dint of a title deed issued to her on 15th May, 2007 (see, annexure marked “TKW 3” in the replying affidavit.)

The respondent further contends that the applicant is currently in forceful and illegal occupation of the property.

In her testimony through her daughter, **Florence Auma Wekesa (DW1)**, reiterated her claim of ownership of the material property by virtue of being the surviving widow of the deceased who was the initial and actual owner of the property as opposed to the applicant and any other person.

The respondent produced her title deed (D.Ex. 2) and indicated that the material plot No. 1350, was a sub-division of the original larger portion described as plot No. 639 which became a subject of several court disputes pitting the deceased and his brothers including the applicant herein.

She (respondent) contended that the title deed produced by the applicant (i.e. P. Exh. 1) was not a valid document. Her witness, **Cosmos Chaka Makokha (DW2)**, fully agreed with her evidence.

The evidence and the submissions of both parties having been considered by this court, it is apparent that the real bone of contention in this matter is the ownership of the parcel of land known as Kimilili/Sikhendu/1350 or plot No. 1350 rather than the propriety in the obtaining of the letters of administration by the respondent and another respecting the estate of the deceased.

Indeed, being the widow of the deceased, the respondent stood first in priority to all those entitled to apply for the grant.

The deceased was survived by the respondent and their children. Being a brother to the deceased, the applicant was not and could not be at the top of the priority list for those entitled to apply for the grant and/or those entitled to benefit from the estate of the deceased.

Nonetheless, the applicant had the necessary “locus-standi” to bring this application in as much as he is laying claim to a portion of land (i.e. plot No. 1350) which was included as forming part of the estate of the deceased. However, the same parcel of land is also claimed by the respondent on account of grant of letters of administration issued to her by this court.

Both the applicant and the respondent have produced their respective title deeds to the land and although the existence of two different title deed for the same portion of land raises suspicion, the applicant has herein failed to satisfy the court that the inclusion of plot No. 1350 as part of the estate property was misleading if not fraudulent.

The applicant has failed to offer tangible evidence to show that the title deed produced by the respondent was a fraudulent document and cannot stand in the light of a title deed issued to him much earlier.

In the circumstances, the credibility of both titles is doubtful and the only way to resolve the riddle is by way of necessary application before the appropriate court (i.e. the Environment & Land Court) which invariably would make appropriate determination on ownership of the material portion of land based on proper and cogent evidence.

As it were, the present application was made prematurely as the issue regarding the ownership of plot No. 1350 is yet to be conclusively resolved by a court of law or by the appropriate land registry. This explains why the applicant has failed to achieve the threshold for the grant of an order of revocation and/or annulment and/or rectification of the grant or the certificate of confirmation of grant issued to the

respondent and another.

In sum, the application is lacking in merit and is hereby dismissed. Each party to bear own costs and are best advised that each is at liberty to move the appropriate court for determination on ownership of the disputed property and/or cancellation of either of the two title deeds.

[Read and signed this 8th day of May, 2014.]

J.R. KARANJA.

JUDGE.

Court:- Leave to appeal granted to both sides.

J.R. KARANJA.

JUDGE.