



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIVASHA
SUCCESSION CAUSE NO. 46 OF 2014

(Original Succession Cause No. 170 of 2009 of the Chief Magistrate's Court at Naivasha)

IN THE MATTER OF ESTATE OF THE LATE JOSEPHINE NYAMBURA....DECEASED

-VERSUS-

SUSAN WAIRIMU KIBAARA.....PETITIONER

R U L I N G

1. The Petitioner/Applicant obtained Letters of Administration in respect of the Estate of Josephine Nyambura Munga which were confirmed on 30th August 2010. The assets of the estate included a parcel of land, namely, **NAIVASHA/MARAIGUSHU BLOCK 4/1445**. She subsequently discovered that a caution had been lodged against the property by one John Kabera Nguru on 8/3/2011 claiming a purchaser's interest (*See annexure 'SWK2' to the Supporting Affidavit of the Petitioner*).
2. On 31st January 2012 the Petitioner filed a Notice of Motion seeking an order that the said restriction be removed, on grounds that the caveator is a stranger. That is the gist of the Affidavit sworn by the Petitioner in support of the application.
3. In opposition to the application the Respondent/caveator swore two affidavits asserting beneficial interest in the property derived from sale transaction between him and one Kibara Mungai the husband to the Petitioner. He avers that the said vendor fraudulently transferred the property to the deceased, with the knowledge of the Petitioner. He also asserted that he was in the process of seeking a revocation of the Grant.
4. The matter was subsequently referred to this Court as the Respondent raised an objection to the effect that the value of the suit property exceeded the pecuniary jurisdiction of the Lower Court.
5. I have considered the matters canvassed in respect of the application and take the following view. The Petitioner was appointed as the administrator of the estate of the deceased, Josephine Nyambura Munga, and not in respect of the Estate of Kibara Mungai the alleged vendor whom the Respondent transacted with. According to the search done on 6/12/2011 on the property in dispute, the deceased was registered as the proprietor on 6/7/1995. The purported sale agreement between the Respondent and Kibara Mungai is dated 11th January, 2009.
6. The details of the land which was the subject of the sale are not indicated. All that is indicated is

the size of the plot (1/2 acre) and the location (New Karate residence) and further that the "Title deed is nowhere to be seen, but we shall follow later...." The relationship between the said agreement and title number **NAIVASHA/MARAIGUSHU BLOCK 4/1445** is therefore not clear. If the Respondent had good reason for challenging the Grant of Letters to the Petitioner, he ought to have applied for revocation of the Grant.

7. I am of the view that by filing a caution in respect of the deceased's estate without any seeming proper grounds or by approaching the court seized with this matter, the Respondent was meddling with the estate of the deceased. Since the year 2011 when he filed the caution the Respondent has not moved the court concerning his declared intentions to seek revocation of the Grant made to the Petitioner. In the circumstances the caution cannot be allowed to remain on record thereby obstructing the full administration of the estate of the deceased.
8. I do allow the Petitioner's Notice of Motion filed on 31st January 2012. The costs of the application will be borne by the Respondent.

Delivered and signed at Naivasha this 4th day of December,2014

In the presence of

For Petitioner/Applicant

For Respondent

Court Clerk Stephen

C. W. MEOLI

JUDGE