

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
PROBATE & ADMINISTRATION 14 OF 2003

IN THE MATTER OF CHRISTOPHER WAWIRE MAUDO (DECEASED)

ALBERT MANG'OLI WAWIRE.....PETITIONER

~VRS~

CAROLYNE NABWILE WAWIRE.....OBJECTOR

RULING

This Cause begun in 1993 in the subordinate court at Bungoma when the Petitioner successfully applied for a grant which was confirmed. He used the grant to have all the 14 parcels of land belonging to his deceased father Christopher Wawire Maudo transferred to him. On 7/3/2003 the Objector applied before this court to have the grant revoked. She is the only surviving widow of the deceased with whom she had two sons. The Petitioner came from the first house. The Objector's complaint was that although she had objected to the Petitioner being given letters by the subordinate court the matter nonetheless proceeded without notice to her. When the grant was confirmed, she deponed, the Petitioner inherited all the property of the deceased some of which he has disposed and has, generally, not accounted for all these.

The record shows that on 10/6/2004 the parties agreed that the application for revocation be allowed. It was agreed that the grant be revoked and a fresh one in the joint names of the parties be issued. The Petitioner was to furnish an inventory regarding the current state of the deceased's estate. The parties begun discussing the distribution of the estate.

On 25/5/2010 it was ordered that the grant be confirmed on 15/6/2010 and, to enable this, the parties do file a joint affidavit on the mode of distribution. On 15/6/2010 the grant was confirmed on basis of the affidavit dated 14/6/2010 filed by the Objector. In the affidavit she had proposed she be registered in respect of land parcels nos.W.BUKUSU/S.MATEKA/1650, E.BUKUSU/S.KANDUYI/1252, E.BUKUSU/S.KANDUYI/8569, E.BUKUSU/S.KANDUYI/11297, E.BUKUSU/S.KANDUYI/11298 and E.BUKUSU/S.KANDUYI/11299 to hold in trust for her son Kennedy Wawire and E. BUKUSU/S.KANDUYI/2565, plot no.1 Lusumu Market, plot measuring 50ft by 100ft from E.BUKUSU/S.KANDUYI/8569, E.BUKUSU/S.KANDUYI/11300, E.BUKUSU/S.KANDUYI/8568 and 8570 and E.BUKUSU/S.KANDUYI/10343, 10344 and 10345 to hold in trust for her other son Jacob Wawire. A certificate in those terms was issued on 15/6/2010.

On 12/11/2010 the Petitioner brought the present application seeking that the grant be recalled and annulled. His case was that after the court asked for a joint affidavit showing the mode of distribution the parties went home but were unable to agree. Each party filed his/her own affidavit. In his affidavit he made a proposal that was completely different from the one proposed by the Objector. He pointed out the proposals by the Objector which find themselves in the grant are not operable because, for instance, parcel no.E. BUKUSU/S.KANDUYI/8568 no longer exists following subdivision and closure of the register; that parcel no.E.BUKUSU/S.KANDUYI/8570 now belongs to a third party Charles Natili

Wekesa; and parcels E.BUKUSU/S.KANDUYI/11298 and 11299 belong to Pauline Okusimba and Janerose Nasirumbi Mukanga, respectively. Parcel E.BUKUSU/S.KANDUYI/1252 equally belongs to a third party.

What is apparent is that after the Petitioner got the initial grant he proceeded to dispose of the estate without reference to the objector or her sons. The only way the matters were going to be reconciled was if a joint affidavit was filed as had been ordered, or if the parties proceeded to have the dispute heard and resolved one way or the other. It is certain now that the grant confirmed to the Objector did not have the input of the Petitioner and has to be revoked. The application by the Petitioner is consequently allowed.

However, in order to protect the estate from any further wastage or disposal, and in the wider interest of justice, I make an order under section 128 (1) of the Registered Land Act (Cap.300) to inhibit any dealings in the initial titles of the deceased or any subdivisions that have resulted therefrom until this dispute is heard and determined, or until any further orders.

Dated, signed and delivered at Bungoma this 12th day of July 2012.

A. O. MUCHELULE
JUDGE