



REPUBLIC OF KENYA



KENYA LAW
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**County Government of Nyamira v Sigah (Civil Appeal 34 of 2018)
[2021] KECA 34 (KLR) (23 September 2021) (Judgment)**

Neutral citation: [2021] KECA 34 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 34 OF 2018
W KARANJA, MSA MAKHANDIA & F SICHALE, JJA
SEPTEMBER 23, 2021**

BETWEEN

COUNTY GOVERNMENT OF NYAMIRA APPELLANT

AND

JUSTUS A. M. SIGAH RESPONDENT

*(An Appeal from the Ruling and Order of the High Court of Kenya at Kisii
(W. Okwany, J.) delivered on 18th April 2016 in E.L.C. No. 248 of 2013)*

JUDGMENT

1. Prisca Nyareso Okinyi filed before the Resident Magistrates' Court at Keroka Succession Cause No. 6 of 2011 seeking a Grant of letters of administration to the estate of her deceased husband, Nyan'gau Onyari (the deceased). The Grant was issued to her but Justus A. M. Sigah (the respondent) filed an objection thereto citing several grounds which we shall advert to later.
2. Having heard the summons for revocation the High Court of Kenya at Kisii, (W. Okwany, J.) rendered a Ruling dated and delivered on 18th April, 2016 in which the learned Judge allowed the summons for revocation and consequently cancelled the title deed for Land Parcel No. East Kitutu/Mwamangera/545 (suit property) held by the appellant.
3. The respondent sought revocation of the grant citing grounds, inter alia,
 - a) That the succession cause was filed in a court without jurisdiction.
 - b) That the petitioner failed and/or neglected to disclose to the court all the beneficiaries of the estate of the deceased.
 - c) That the petitioner failed and/or neglected to obtain the consents of all the beneficiaries of the estate of the deceased.



- d) That the petitioner used a false and/or fraudulent death certificate of the deceased to file the petition.
 - e) That costs of the objection be borne by the appellant.
4. The respondent averred that the petitioner fraudulently obtained the deceased's death certificate and did not get the consent of all the beneficiaries prior to the distribution of the estate which distribution did not cater for the interests of all the rightful beneficiaries whom he listed as follows: -
 - i. William Bosire – son to the deceased.
 - ii. Justus A.M. Sigah and his siblings who are the grand children of the deceased being the sons of Samuel Sigah who was son to the deceased.
 - iii. Esther Nyangau Gekonge – daughter to the deceased.
5. The respondent contended that his siblings and himself being grandchildren of the deceased had been disinherited from their father's land/estate through the skewed distribution of the deceased's estate and hence prayed for the revocation and/or annulment of the grant issued to the petitioner.
6. On 25th November, 2013, the court issued orders to preserve the status quo prevailing in respect of the suit property pending the hearing and determination of the objection proceedings. Subsequently however, during the pendency of the said orders the suit property was sold to the County Government of Nyamira (the appellant). According to the appellant, it was not aware of the said orders and when it became aware of their existence, it filed an application to be joined as an Interested Party in the proceedings. Its application was allowed on 17th July, 2015 and the appellant became a party in the succession proceedings.
7. In response to the application for revocation of the grant of letters of administration issued to her, the petitioner filed a replying affidavit in which she deponed that the suit property was registered in her name jointly with her sister one Anne Kwamboka Oenga after the successful conclusion of the succession case; that the deceased who was her father, had prior to his death distributed and transferred Land Parcel No. East Kitutu/Mwamangera/544 to his two sons namely Bosire Nyang'au and Samuel Siga (deceased); that the deceased had 2 wives and had therefore allocated his land to each wife/house and that Samuel Siga the father of the Objector together with his brother Bosire Nyang'au were allocated Land Parcel No. East Kitutu/Mwamangera/544.
8. The petitioner further deponed that the respondent was notified of the filing of the Succession Cause, and that the respondent should concern himself with LR. No. East Kitutu/Mwamangera/544 which was registered in the joint names of his father Samuel Siga (deceased) and his brother Bosire Nyangau.
9. The appellant herein opposed the application through a replying affidavit in which it was deposed that the appellant purchased the suit property from the petitioner on 16th September, 2013 after conducting a search which established that the petitioner was the registered owner thereof; that following the said purchase, the land was subsequently transferred to the appellant who on 31st October, 2013 secured a title for the same.
10. The parties filed written submissions. The respondent submitted that the court at Keroka lacked the requisite pecuniary jurisdiction to handle the succession cause since the suit land was valued at more than Kshs. 10,000,000 yet the court's jurisdiction was then limited to Kshs. 100,000. He also reiterated the fact that the petitioner did not obtain the consent of all the beneficiaries prior to the filing of the application for grant of letters of administration intestate which was a mandatory requirement and



that the Petitioner concealed from the court, the true identity of all the rightful heirs and beneficiaries of the deceased's estate.

11. The petitioner further submitted that the respondent was not a beneficiary of the deceased since he was supposed to pursue his own deceased father's land Parcel No. East Kitutu/Mwamangera/544 and that the respondent had no capacity to demand a share of the deceased's estate since he was not a dependant of the deceased, but a grandchild; by virtue of being the son of the petitioner's brother one Samuel Sigah (deceased).
12. On its part, the appellant submitted that it lawfully purchased the suit land from the petitioner on 16th September, 2013 and thereafter secured registration as the owner on 31st October, 2013 and that by dint of Article 40 of the *Constitution of Kenya*, it had the right to acquire and own property of any description in Kenya.
13. The appellant went on to state that it held an indefeasible title to the said land by virtue of the provisions of Section 93 (1) of the Law of Succession Act Cap 160 Laws of Kenya; that the revocation or annulment of grant would not serve any useful purpose because by virtue of the said provision, the appellant's title could not be affected by any revocation of the grant and that it was an innocent purchaser of the suit land without notice who had secured title and vacant possession.
14. Having heard the parties, the learned Judge allowed the summons for revocation of grant and ordered that a fresh grant be issued in the joint names of the petitioner and the respondent. The court further held that the title to the suit land currently held by the appellant be cancelled and revert to the names of the deceased and all beneficiaries were at liberty to file an application for confirmation of grant or affidavits of protest.
15. Aggrieved by the above findings, the appellant herein proffered the instant appeal by filing a Memorandum of appeal in which it proffers six (6) grounds stating, inter alia, that: the learned Judge erred and misdirected herself in allowing the application; the learned Judge erred in dismissing the appellant's case; the learned Judge erred in failing to find that the appellant's title to the suit land was valid, the learned Judge erred in putting too much emphasis on technicalities and not the substance of the claim, the Judge erred in failing to find that the respondent was not only non – suited but also had no locus standi to file the application and lastly that the learned Judge erred in failing to find that the appellant being an innocent purchaser for value and without notice of any claims by the respondent on the suit land had acquired a good title.
16. In its submissions, the appellant reiterated that it was a bona fide purchaser for value without notice of any other claim on the suit land hence acquired a good title upon purchase, that the appellant was not aware of any court order for maintenance of status quo, since inasmuch as the petitioner was served with the order, there is no evidence he in turn served the appellant, that the respondent has no locus standi to challenge the succession cause, that with the material placed before the trial court, the Judge should have dismissed the cause and that the appellant is a public entity who spent public resources to purchase the suit land for public use.
17. According to the respondent, the learned Judge did not err in dismissing the appellant's case since she directed her mind to section 93 of the Law of Succession Act and even outlined an ideal situation where the title obtained by the appellant would have been indefeasible. That in the instant matter the registration of the suit land was obtained in defiance of court orders and in bad faith.
18. On the contention of the respondent lacking locus standi, the respondent submits that this ground cannot be sustained since under section 76 of the Laws of succession, any interested party or the court



suo moto can, on proof of grounds set out in that section proceed to revoke a grant and that the respondent herein was a grandson to the deceased.

19. In this regard, the appellant made heavy weather of the argument that it lawfully purchased the suit land from the petitioner on 16th September, 2013 and thereafter secured registration as the owner on 31st October, 2013 and that by dint of the provisions of Article 40 of the Constitution, it had the right to acquire and own property of any description in Kenya; that it held an indefeasible title to the said suit land by virtue of the provisions of Section 93 (1) of the Law of Succession Act.
20. We have critically re-evaluated the evidence as analysed above. In the course of the said re-evaluation, a pertinent issue in this appeal has come to our notice. We have observed that this is actually a second appeal from the decision of the resident magistrate pursuant to Section 47 Law of Succession Act. Undoubtedly, this is a succession matter that is covered by the Law of succession Act. A question of jurisdiction therefore arises. Although none of the parties raised this issue, it being a fundamental jurisdictional issue, the Court is enjoined by law to raise and determine the issue suo motu. Faced with a similar situation, this Court in *Hafswa Omar Abdalla Taib & 2 others vs Swaleh Abdalla Taib* [2015] eKLR expressed itself as follows:-

“Unfortunately for the parties and despite their industry in ventilating the issue of goodwill, the determination of the appeal will disappoint them as it turns on the question of jurisdiction; that is, whether this Court has jurisdiction to entertain this appeal in the first place. We appreciate that it is an issue that was not raised by any of the parties. However, it is an issue of law that has long been settled and the parties and indeed their legal teams are deemed to know. Accordingly, this Court can suo moto raise and determine the same.” (Emphasis supplied)

21. Section 50(1) Law of succession Act therefore kicks in. It provides as follows:-

“An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.”

This Court has time without number addressed the issue of jurisdiction in respect of second appeals in succession matters such as this one. It being a jurisdictional issue, the Court is enjoined to address it before delving into the interrogation of the merits of issues arising in this appeal. See the case of *Francis Macharia Karanja & 6 Others vs. Virginia Muthoni Karanja* [2020] eKLR. In *Rhoda Wairimu Karanja & Another vs. Mary Wangui Karanja and Another* [2014] eKLR, the Court was explicit that:

“... section 47 of the Law of Succession Act makes no mention of an appeal to the Court of Appeal from the decision of the High Court made in the exercise of the latter in its original jurisdiction.

.....

We make two points from the foregoing analysis. One, a court’s jurisdiction flows from either the Constitution or statute or both. See Article 164 (3) of the Constitution and section 3 of the *Appellate Jurisdiction Act*. It cannot be assumed or donated by parties or arrogated by the Court itself. Jurisdiction is everything and if a court does not have it, it downs tools. These are well-established principles.

.....”



22. The court has been consistent in reechoing the above position. See the case of John Mwita Murimi & 2 Others vs. Mwikabe Chacha Mwita & Another [2019] eKLR in which the Court categorically had this to say:-

“9. ... there is no evidence on record that leave of the High Court or this Court was obtained to institute the appeal. We re-affirm the decisions of this Court in Rhoda Wairimu Karanja & Another vs Mary Wangui Karanja & Another [2014] eKLR and *Josephine Wambui Wanyoike vs Margaret Wanjari Kamau & Another* [2013] eKLR, where it was clearly stated that in succession matters, there is no automatic right of appeal without leave of court...”

23. There is no contestation that no leave to appeal was sought or granted in this matter. There was therefore no basis for the appellant to approach this Court on appeal as it did. Having so found, it is evident that we have no requisite jurisdiction to deal with this matter and we must down our tools before interrogating the merits or otherwise of the appeal before us. Consequently, this appeal fails and we dismiss it with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2021.

W. KARANJA

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

