



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 226 OF 2012**

**IN THE MATTER OF THE ESTATE OF JOHN PATYA LITIJU ANGOTE DECEASED**

**BETWEEN**

**JENIPHER BUSOLO PATYA.....PETITIONER/RESPONDENT**

**VERSUS**

**REGINA MUKHABI SHITAKWA.....OBJECTOR/APPLICANT**

**JUDGMENT**

1. The objector has filed a notice of motion dated 20<sup>th</sup> April, 2015 seeking that the grant of letters of administration issued by this court to Jenipher Busolo Patya, the petitioner herein, on the 28<sup>th</sup> October, 2014 and confirmed on 5<sup>th</sup> November, 2014 be revoked.
2. The grounds in support of the application are that the petitioner did not disclose some material facts that were important to the distribution of the estate and that the objector's interest were not taken into account despite the petitioner's knowledge of the objector's interests.
3. The application is supported by the affidavit of the objector deponed on 20<sup>th</sup> April, 2015.
4. The objection proceedings were heard by way of *viva voce* evidence wherein the objector was treated as the plaintiff and the petitioner as the defendant. The objector was the only witness in her case. She in addition adopted her affidavit sworn on 20<sup>th</sup> April, 2015 as part of her evidence. The petitioner testified and also did not call any witness in the case. She similarly adopted her replying affidavit sworn on 24<sup>th</sup> September, 2015 as part of her evidence in the case.
5. The objector was represented by Mr. Momanyi, advocate while the petitioner was represented by Miss Ashitsa, advocate.
6. The case for the objector was that she is the legal representative of the estate of the late Margaret Masitsa who was a sister to her mother. That the said Margaret was the registered owner of Land parcel **Idakho/Shiseso/1361**. That sometimes back the late husband to the petitioner, John Patya Litiku, leased part of the land from Margaret Matsista. That later on John patya transferred the land to his name without the knowledge of Margaret Masitsa and obtained a title deed to the land. That Margaret sued John Patya in court. She died in February, 1988. The objector and her co-administrator then sued John's widow, the petitioner, at kakamega Law courts in Civil Suit No. 128 of 2011. The said case was pending at the Environment and Land Court when this case was heard.
7. The objector stated in her supporting affidavit that land parcel Idakho/Shiseso/1361 is under her use. She however stated in cross-examination in court that the land is currently occupied by the family of John Patya and the family of her uncle.
8. The petitioner on her part stated that the late John Patya Litiku was her husband. That in 1981 he told her that he had bought land from the late Margaret Masitsa. He showed her the title deed to the land. That they have been in occupation of the land since that time to the exclusion of the objector. She contended that the objector has no locus standi to institute the cause herein for lack of grant of representation on the estate of Margaret Masitsa. She denied that the appellant is in use of the land. The petitioner further says that the grant issued to her and confirmed on 5/11/2014 comprises the deceased's estate that includes land parcel Idakho/Shiseso/423 and Idakho/Shiseso/1361. She annexed a copy of official search marked "JBP1" that indicates that the land was registered in the name of her late husband on 4/9/1981.
9. After the parties had closed their cases, the court was informed of the suit that was pending at the Environment and Land Court over the subject land. The court awaited the determination of the said case before proceeding with the succession proceedings. On the 22/10/2019, Miss Ashitsa, acting for the petitioner brought the determination of the said suit that indicated that the suit at the ELC was dismissed for want of prosecution on 26/9/2018. A copy of the ruling was filed with the court.

**Analysis and Determination**

10. The petitioner testified that she was a daughter to one Shishiani who was husband to Margaret Masista. That the disputed land belonged to her father. That she is married. That she was small when her father died but that she was big when John occupied the land though she does not know the year when he did so.

11. The objector states in her supporting affidavit that Margaret Matitsa was the registered owner of the land. She however did not produce any document to prove so. The search certificate marked "JBP1" shows that John Patya Litiku was registered as the owner of the land in 1981. It was still his property at the time of his demise.

12. The objector contends that John Patya fraudulently obtained the land from Margaret Masitsa. Whether John fraudulently obtained the land from the late Margaret Masitsa is not a dispute that falls within the jurisdiction of a succession court. That is a dispute over title to land between the estates of the late John Patya Litiku and the late Margaret Masitsa. It is the Land and Environment Court that is vested with the jurisdiction to hear such a dispute. Indeed parties had filed a suit before the ELC that was dismissed for want of prosecution.

13. Though the objector stated in her supporting affidavit that she is in use of the disputed land, she admitted in her evidence in court that it is the family of John Patya and her uncle who are in use of the land. It then appears that the objector is not a credible witness.

14. It is my finding that land parcel Idakho/Shiseso/1361 is the free property of the estate of John Patya Litiku. There are no grounds for the revocation of the grant issued to the petitioner. The objection dated 20<sup>th</sup> April, 2015 has no merit and is accordingly dismissed with costs to the petitioner/respondent.

Delivered, dated and signed in open court at Kakamega this 18<sup>th</sup> day of December, 2019.

**J. N NJAGI**

**JUDGE**

In the presence of:

.....N/A.....for objector/applicant

.....N/A.....for petitioner/respondent

Applicant .....present.....

Respondent.....Absent.....

Court Assistant.....Polycap.....

30 days Right of Appeal