



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

SUCCESSION CAUSE NO. 44 OF 2013

IN THE MATTER OF THE ESTATE OF ZACHARY MOMANYI ORANGI (DECEASED)

BETWEEN

TOM OSEKO ORANGI.....PETITIONER/RESPONDENT

AND

ISAAC MBAKA OSEKO.....OBJECTORS/APPLICANTS

SAMWEL MOCHAMA MOMANYI

RULING

The application before me is summons for revocation of grant of letters of administration issued to TOM OSEKO ORANGI and confirmed on 4th July 2014. The application is dated 20th December 2017. According to the Certificate of Confirmation the property known as MAJOGE/BOMBABA/538 ("Plot 538") was to be distributed as follows:

| | |
|---------------------------|---------|
| 1. Tom Oseko Orangi | 2.12 Ha |
| 2. Maria Kemunto Orangi | 0.07 Ha |
| 3. Samuel Mochama Orangi | 1.06 Ha |
| 4. Andrew Onsoti Momanyi | 1.06 Ha |
| 5. Charles Said Momanyi | 1.06 Ha |
| 6. Justine Nyabega Onduso | 0.13 Ha |
| 7. Isaac Mbaka Oseko | 2.12 Ha |

The thrust of the application is that the administrator failed to administer the estate in accordance with the Certificate of Confirmation and instead sold or transferred the properties to himself and other parties.

The County Land Registrar, Steve Mokaya, testified that after the Certificate of Confirmation was registered the main register for Plot 538 was closed and four subdivisions; Plots 5025, 5026, 5027 and 5028 opened and the titles issued to Tom Oseko Orangi. He charged Plot 5025 to Kenya Commercial Bank to secure a loan of Kshs. 700,000/=. He retained Plot 5026 for himself while he transferred Plot 5027 to Justin Nyabega Onduso. As regards Plot 5028, he transferred it to Jacklin Nafula who transferred it to Nancy Mogire before transferring it back to herself.

It is clear that the transfers were done in direct contravention of the Certificate of Confirmation which set out the specific beneficiaries hence there are clear grounds for revoking the grant and titles issued. I am however alive to the fact that one property has been changed to Kenya Commercial Bank and another transferred to Justine Nyabega Onduso who is a beneficiary named in the Certificate of Confirmation. According to Samuel Mochama (PW 1), the deceased's son, Jacklin Nafula is a wife to Tom Orangi and as such she cannot be considered a bona fide purchaser.

The totality of the evidence leads me to conclude that the administrator has failed to administer the grant in accordance with the Certificate of Confirmation and he has violated the terms thereof. I therefore revoke the grant issued to him and confirmed herein.

I set aside the transfers to Jackline Nafula and Tom Orangi particularly in respect of Parcel No. MAJOGGE/BOMBABA/5028 and 5026 which shall revert to the estate of the deceased.

I hereby appoint SAMWEL MOCHAMA MOMANYI as the administrator to whom a grant of letters of administration shall now issue. He shall apply for confirmation within 30 days from the date hereof.

In the meantime, Tom Orangi shall bear the costs of administration and further subdivision.

Mention on 1st August 2018 for Tom Orangi to show cause why he should not account for the loans proceeds under section 94 of the Law of Succession Act. Summons to issue accordingly.

Dated and delivered at Kisii this 27th June 2018.

D.S Majanja

Judge