



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
PROBATE & ADMINISTRATION CAUSE NO.93 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE JOHN MANYONGEWAKULI...DECEASED

AND

MESHACK S.A. MALECHE.....APPLICANT

VERSUS

REBECCA NALIKA MANYONGE.....1ST RESPONDENT

WYCLIFFE KASEMBELI WAKOLI.....2ND RESPONDENT

RULING

1. Before Court for determination is an application for revocation of a grant that was issued to the respondents on the 1st of December 2006 on grounds that the same was obtained fraudulently by concealing of material facts and the proceedings thereof defective in substance.
2. In his affidavit in support of the application the applicant deposes that on 17th of January, 1973 he bought land parcel number Bungoma/Kabisi/546 from the deceased, and he took possession the same year; the respondents relocated and were aware that he was in occupation yet in 2006 they caused the property to be registered in the names of the deceased.
3. In her replying affidavit dated 15/7/2011 the 1st petitioner, claims that the person who intended to buy the land was the applicant's brother who did not pay the entire purchase price, further all documents annexed were a forgery; the applicant ought not to have the land as her children and herself are currently squatters.
4. In the Petition for grant of representation the Petitioners indicated the only asset of the estate to be Bungoma/Kabisi/546 measuring 8.1 hectares. This is the same property the applicant is claiming to have bought.
5. In evidence the applicant produced the following documents in support;
 - a. *A Sale agreement dated 17th January, 1973*
 - b. *An application to the land Control Board*
 - c. *Letter of consent dated 21/3/1973*

d. A letter from the Ministry of lands and settlement dated 29th November, 1976

e. Photographs of the house he erected on the land, the farm, homestead and livestock.

6. Coupled with the above he claims that he has been in possession for over 30 years which claim was not challenged by the Petitioners / respondents.

7. Although the Applicant's claim cannot be the reason perse to revoke the grant his claim against the evidence adduced cannot be ignored all together.

He indeed, in my view has a prima facie claim against the estate of the deceased, however the claim is misplaced. He ought to pursue his claim in the Land and Environment Court against the Administrators (Petitioners).

8. And since the only asset shown to exist is the land subject matter of this application; it will only be fair that the confirmation of the grant herein be stayed pending hearing and determination of the intended suit by the applicant.

9. And in order not to delay the matter the applicant is directed to file a suit against the Petitioners as representatives of the estate of the deceased in the Land & Environmental Court within the next 30 days of the date of this ruling.

10. The costs of this application do abide the outcome of the intended suit above.

DATED and DELIVERED at BUNGOMA this 21st day of September, 2017

ALI-ARONI

JUDGE