



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO 650 OF 2013

IN THE MATTER OF THE ESTATE OF ABDI IBRAHIM -DCD

RULING

This is cause in relation to the inter estate of the late Abdi Ibrahim who died on 7th March 2004. The estate is comprised of parcel of land No. Nkuene/Mitunguu/1945.

The Administrator M'Arimi M'Ikiara was granted letters of Administration following an order made in Succession Cause No. 106 of 2011 where he cited Mohamed Ibrahim to take Letters of Administration but the said Citee didn't respond and he was granted leave to petition for Letters of Administration to the estate of the deceased on account he had paid partial purchase price for purchase of $\frac{1}{4}$ acre of land from parcel of Land No. Nkuene/Mitunguu/1230. According to M'Arimi M'Ikiara and vide annexure "MMII" to verifying affidavit to citation shown on 5th February 2010, he had paid a total of Kshs 45, 210/- out of Kshs 100,000/- by 23rd July 2003 for purchase of $\frac{1}{4}$ acre of land from above parcel.

Grant of Letters of Administration was made on 8th October 2015 and immediately thereafter the administrator applied for confirmation by application dated 4th November 2015 before expiry of 6 months for the reasons in supporting affidavit that the deceased left no spouse, children or parents save for a brother the applicant herein Mohammed Ibrahim and Adija Ibrahim.

He averred that his beneficial interest was $\frac{1}{4}$ acre out of Nkuene/Mitunguu/1945 which was subject of sale agreement between him and the deceased as per agreement dated 24rd July 2003. He claimed he was 93 years by 4th November 2015 herein he swore affidavit and terminally ill, frail, sickly, and partially deaf and blind and often bedridden and not able to make much movement and that if he was to wait for Statutory 6 months he feared he would not make it to appear in court in person. He averred there was no objection to the grant being confirmed. On account of the application under Certificate of Urgency the grant was confirmed and the whole parcel No. Nkuene/Mitunguu/1945 devolved to the administrator Mohammed Nuru applied for revocation of grant saying the Respondent was a stranger to the estate of his late brother Abdi Ibrahim and that he filed the cause secretly and fraudulently. He said he was dependant on the deceased and ranked in priority to his estate the deceased having died without any children. He said deceased had no dealings with the Respondent and he was surprised when he registered the entire state into his name.

He said the Respondent cited the deceased mother in citation No. 38 of 2004 but the mother had died and therefore the citation was an abuse of the court process.

He said the Respondent is his neighbour and didn't inform him of his claim. He said he is in possession of the deceased person's original title and it was fraudulent for the Respondent to obtain another.

By an amended application for revocation the applicant sought that an order of inhibition do issue on suit

had as Respondent had gone to suit had on 23.9.2016 and started tilling and destroying crops thereon and he should be restrained. The court made an order that those on land should not be removed and status quo be maintained. The petitioner/Administrator through M/s Ayub K.Anampiu & Co. Advocates filed Replying Affidavit opposing the application. In the supplementary affidavit dated 22nd March 2017 Mohammed claims the deceased left minors on the suit land who the administrator seeks to evict.

I have looked at both the miscellaneous application in which citation was filed and the succession cause herein and failed to find a letter from chief of location where deceased resided to confirm whether deceased was survived by any beneficiaries apart from his sister and the brother the applicant herein.

I have perused the succession cause and seen that the agreement which the Respondent/Administrator relied upon to take out letter of Administration shows that the total purchase price was Kshs 100,000/= and Kshs 45,210 had allegedly been paid by 23rd July 2003 for purchase of ¼ acre out of L.R. No 1230. The deceased died on 29th May 2004 and it is not shown that the total purchase price was paid. It is also not exhibited.

What the determination in the suit in the lower court for specific performance and/or refund of purchase price was so that the rush to obtain certificate of confirmation before expiry of statutory period of 6 months becomes suspect of fraud.

Assuming that the Respondent had completed paying purchase price for ¼ acre out of the estate property then the question that follows is why he got the whole parcel registered in his name.

These questions can only be answered after the fraudulently obtained grant has been revoked and/or annulled and parcel No. 1230 reverted to the name of the deceased herein pending proper petition being filed and the chief confirming whether deceased had any heirs/beneficiaries surviving him.

The grant is now issued in the joint names of M'Arimi Ikiara and Mohammed Nuru Ibrahim pending compliance with order/instructions made herein. No orders as to costs. Application for confirmation to be filed.

HON. A.ONG'INJO

JUDGE

31.8.2017

Before Adwera – Ong'injo J

Penina Court Assistant

Ms Gikunda Anampiu Advocate holding brief for Ayub Anampiu Advocate for petitioners.

Ms Thangira Advocate holding brief for Mutunga Advocate for Objector.

Courtas

Ruling Delivered, Dated and Signed in court.

HON. A.ONG'INJO

JUDGE