



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 391 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE CHEBANDE ALIMBA (DECEASED)

ABDALAH MUHAMED A. KASINDE.....1ST APPLICANT

MOHAMMED ALI.....2ND APPLICANT

MARIAM SALIM.....3RD APPLICANT

VERSUS

ANTONY NGETICH SEUREY.....1ST RESPONDENT

JOSHUA MZEE KITION.....2ND RESPONDENT

RULING

1. Abdalah Muhamed A. Kasinde, Mohammed Ali and Mariam Salim hereinafter called the Applicants have applied to this court, by their summons dated the 5th August 2013, that the Grant of Letters of Administration issued to Antony Seurey and Joshua Mzee Kition (*hereunder called the Respondents*), on the 3/11/2010 and confirmed on the 15th June, 2012 be revoked.
2. The Applicants also sought for an order that pending the hearing and determination of this application, and determination of this application, the Respondents by themselves, their agents, servants, employees or others whosoever be restrained from taking possession of, entering, selling, leasing out, transferring, charging or in any other manner dealing with the properties herein. The properties in dispute and as described in the Certificate of Confirmation of grant made by this court on the 15th June 2012 to Antony Ngetich Seurey are Nakuru Municipality/Block 13/314, Nakuru Municipality/Block 13/320, Nakuru Municipality/Block 13/321.
3. On the 18th October, 2013 the court issued restraining orders against the Respondents in terms of prayer No. 2 of the application. The said restraining orders are in place, and a further order directed that the application under review be heard through *viva voce* evidence.
4. Though served, the Respondents opted not to file their responses to the application nor attend court during the hearing of the application on the 23rd October, 2014.
5. The First Applicant Abdalla Muhamed A. Kasinde in his evidence stated that he is the owner of plot Nakuru Municipality/Block 13/314 having bought it from one Miriam Cheruto Boit in 1992 and produced a sale agreement to that effect dated the 9th December, 1992 and has built 12 rental

houses and lives therein since 1992, peacefully up to 2007 when the 1st Respondent came claiming ownership, and once again in 2013 when he attempted to get his tenants pay rent to his agents. He then filed a suit against the 1st Respondent in the Environment and Land Court, vide High Court ELC Case No. 453 of 2013 at Nakuru which case is pending hearing before the said court. The 1st Applicant further stated that his name was entered in the Municipal Council of Nakuru register and has been paying rates since 1992. He therefore prays that this property be removed from the schedule of assets in the Confirmed Grant of Letters of Administration issued to the 1st Respondent as the property having been sold to him in 1992 is not available for distribution.

6. The Second Applicant Mohammed Ali in his evidence claimed ownership to Plot No. Nakuru Municipality Block 3/320 and too prays that the property ought to be removed from the schedule of properties in the grant issued to the 1st Respondent.

It is his statement that he inherited the plot from his late father who died in 1954 and has since been paying rates to the Municipal Council from 1982 after he was given an allotment letter and that he is waiting to be issued with a title deed as survey has been undertaken.

7. The Third Applicant Mariam Salim was represented in court by her daughter Aisha Said Abdul through a Power of Attorney. A similar story was told that the said Mariam Salim bought the plot Nakuru Municipality/Block 13/321 in 1976, built and has settled therein with her 20 tenants who pay rent to her. She too pays rates in her name to the Municipal Council, and says she does not know the Respondents. She too prays that this property should be removed from the list of properties in the Confirmed Grant of Letters of Administration issued to the First Respondent as she is the rightful owner.

8. The Applicants' witness one Osman Mathorube Mutua told the court that he knows all the parties herein including the 1st Respondent and his parents who used to live at Bondeni – in their own plot (*not the ones in dispute*), but left only to come back to claim that the disputed plots belong to him. He confirmed that the Applicants are the rightful owners of the plots and that the 1st Respondent was never the owner of the said plots, as the parents of the 1st Respondent sold their plot.

9. As stated above, the dispute as to ownership of the subject plots is pending hearing and determination in the ELC court vide ELC Case No. 453 of 2013 filed by the 1st Applicant. I have looked at the pleadings in the said ELC case as filed by the applicants and the 1st Respondent who is the 1st Defendant therein. The same issues as to ownership are raised and same prayers sought, supported by the same documentation filed in these objection proceedings.

10. I have considered the evidence tendered by all the Applicants and their witness. The Respondents did not participate in these proceedings. I have considered that the plots in issue belonged to one Alima Chebande deceased in 1985, and in whose estate these proceedings relate.

In the letter by the Chief of Barut Location, Nakuru and dated 21st August, 2008, the Chief confirmed that the deceased Halima Nasoor (*Chebande*) was survived by Antony Seurey and Joshua Mzee Kition, described as grand children.

Thereafter, the two applied for Grant of Letters of Administration in respect of the estate (*these proceedings*) in Form P & A 5, the inventory of assets were shown, and it included the three plots under dispute. This was January 2010.

11. By a letter from the Municipal Council of Nakuru dated the 10th August 2006, ownership of the three plots is shown as -

1. Nakuru Municipality/Block 13/314– Halim Noor, P.O. Box 10358 Nakuru
2. Nakuru Municipality/Block 320– Mariam Salim – P. O. Box 627, Nakuru
3. Nakuru Municipality/Block 13/321 – Public Trustee, Box 49672, Nairobi

12. According to the Applicants, they bought the plots from one Miriam Cheruto Boit allegedly the administrator of the estate of the late Alima Nasoor Chebande (*1st Applicant*) in 1992. While the 2nd Applicant says he inherited the same from his late father and has an allotment letter from the Council. The 3rd Applicant says that she also bought the plot in 1976, and has since built rental houses.

It also appears that there was another Grant of Letters of Administration in respect of the estate of Hadija Binti Malike being P & A No. 341 of 1975 whereof one Miriam Cheruto Boit was the administrator, and the sole beneficiary of Plot No. Nakuru Municipality/Block 13/1314.

According to the 1st Respondents averments he never knew of the former applications for grant in respect of his mothers estate, and he then proceed to apply for the grant of representation in this cause.

13. From the above, it is evident that there was some allegations of misrepresentation and or fraud involved, and the issue of the earlier grant in respect of the same properties by the said Miriam Cheruto Boit. The Applicants were bona fide purchasers of the plots as confirmed by the executed sale agreements, and their prayers to have the three plots removed from the schedule of assets in the confirmed grant issued to the 1st respondent on the 15th June, 2012 appears genuine.

14. The upshot of the above is that I find the application merited and grant the prayers sought, in the following terms:

1. That the confirmed grant of letters of administration in respect of the estate of the late Chebande Alima (deceased) issued on the 12th June 2012 to Antony Seurey and Joshua Mzee Kition is hereby revoked.
2. That the Respondents by themselves, their agents, servants, employees or whomsoever are restrained from taking possession of, entering into, selling, leasing out, transferring or in any other way or manner dealing with the properties Nakuru Municipality Block 13/314, 320 and 321 pending the hearing and determination of Nakuru High Court ELC case No. 354 of 2013.
3. That costs of this application be costs in the cause.

Dated, signed and delivered at Nakuru this 27th day of February, 2015

JANET MULWA

JUDGE

Ruling read and signed in open court in the presence of:

Ms Omwenyo - For Applicants

N/A - For Respondents

Court clerk - Mwai