



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 25 OF 2006

IN THE MATTER OF THE ESTATE OF STEPHEN MATHUKU KAVUU (DECEASED)

1. NDINDA MATHUKU
2. SAMMY KITUSA
3. JOEL NZIOKA MATHUKU ADMINISTRATORS/RESPONDENTS

VERSUS

1. HERMAN MUSEMBI MULOKI
2. PATRICK MALAKI MUTUKU ALIAS BABU MUTUKUAPPLICANTS

RULING

1. The application dated 10/5/2011 seeks orders that the confirmed grant of Letters of Administration intestate and the certificate thereof issued by this Honourable Court to **Ndinda Mathuku, Sammy Kitusa Mathuku** and **Joel Nzioka Mathuku** on the 10/3/2008 be revoked (or annulled).
2. It is stated in the affidavit in support that plot **No. 27** at **Nguluni Market** was fraudulently included herein as an asset in the estate of the deceased. That it was concealed from the court that the said plot was jointly owned by the deceased and one **Stephen Nzuki Luli**. That the said **Stephen Nzuki Luli** sold the said plot to the 1st Applicant and to one **Kituku Kiala** at a sum of Kshs.330/= in 1955/1956.
3. That the new owners subdivided the plot into **No. 27 A** and **27B**. That the 1st Applicant developed the plot by building a permanent shop and a store on plot No. 27A while the deceased was alive and nobody objected. That the plot **No. 27B** was later sold in 1989 to the 2nd Applicant who has since developed the same and has built a shop, a store and residential premises. The Applicants have further asserted that upon obtaining the grant, the Respondents sued the Applicants in **RMCC Kangundo 229/2008** seeking orders, *inter alia*, to evict them from the plots in question.
4. The application proceeded *ex parte*. The Respondents did not file any papers in opposition to the application although they were served.
5. The application was canvassed by way of written submissions which I have considered.
6. When the Respondents petitioned the court, they listed three properties as the assets comprising the estate of the deceased. No liabilities were listed. The plot **No. 27 Nguluni** which is the subject matter of this application is one of the listed assets. A letter from the **Town Clerk, Kangundo Town Council** confirming ownership by the deceased of plot **No. 27 Nguluni Market** measuring 30 x 100 was also filed herein. The grant was confirmed on 10/3/2008.
7. The Applicants claim to have purchased the plot in question. Although the 1st Applicant claims to be in occupation of ½ share of the plot he has not exhibited any sale agreement. The 2nd Applicant who claims the other ½ share has exhibited a sale agreement which reflects that he purchased plot **No. 27B** measuring 100 x 15 feet at a sum of Kshs.12,000/= on 2/7/1989 from one

Joseph Munyao Mbuvo. None of the Applicants have exhibited any sale agreement from the deceased either directly or through any other purchaser who purchased the suit property from the deceased. None of the Applicants have exhibited any documents from the **Local Government** to confirm that they own the suit property.

8. With the foregoing, I find that the Applicants have failed to establish any fraud or concealment of material facts. Probably the Applicants' remedy lies in a civil suit. The application has no merits and is dismissed.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of March 2015.

B. THURANIRA JADEN

JUDGE