



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
SUCCESSION NO. 687 'B' OF 2009

IN THE MATTER OF THE ESTATE OF: MAURICE ADORY ATENG

VERSUS

DAVID OMONDI ADORI & FRANCIS OCHIENG ADORI.....APPLICANTS

J U D G M E N T

The objectors/applicants application dated 3-12-2010 prays for the following orders:

1. **that this court be pleased to revoke and or annul the grant of letters of administration intestate issued to the respondents on the 6th May 2010.**
2. **that the title deed in respect of South Sakwa/Barkowino/3322 to be transferred to David Okinda Tanga.**

That application is supported by the applicants sworn affidavit dated 17-5-2010.

When this matter came up for hearing the parties agreed to dispose it by way of written submissions and in particular to determine whether the applicant had any right in the estate. What is not in dispute is that the respondents are the sons of the late Monica Adongo Atieng.

The applicant's claim is that he purchased land parcel No. South Bar Kowino/3322 from James Ogola and Henry Oyar Oyiengo. The deceased according to him was holding the land in trust. He produced as evidence of the alleged purchased a copy of details contained in a diary. It further appears from the applicant's pleadings that he has had a case in court and before the area chief over the suit property.

The respondent on the other hand have opposed the application and have filed a replying affidavit sworn on 7-9-2011. They contend that they sold the suit property to one John Mwai Andiwo who proceeded to fence. This then caused the applicant to react hence the criminal proceedings against him and those at the area chief. They further argued that there was a land dispute between the applicant and the respondents father over the same parcel of land where it was eventually sub divided into two so that the deceased took land parcel number South Sakwa/Bar Kowino/3322 and the applicant took South Sakwa/Bar Kowino/3323. Apparently this line of argument was not disputed by the applicant.

Having read the pleadings herein as well as the parties submissions, what needs to be determined is whether the applicant has any right or claim over the estate. Its manifestly clear that there is no blood relation between the applicant and the deceased.

The only claim by the applicant is that he purchased the suit land from James Ogola and Henry Oyar Oyiengo. Although it is not clearly indicated it appears that he purchased the same on 3-2-2000 for Kshs.

16,000/= and he paid the purchased consideration in installments over a period of time.

From the pleadings it appears that the deceased was the registered owner of the suit parcel of land as at 19-3-1993. Clearly if the applicant purchased land from the said Ogola and Oyiengo, by the year 2000 then they were not the registered owners. Equally if the deceased was holding the title deed in trust, I presume for the two purchasers then he ought to have been involved in the purchase transaction.

For the above reasons I respectfully do not find any nexus between the deceased and the applicant. As a matter of fact he ought to follow the two vendors. In any event if the purchase took place in the year 2000, then what happened between then till the deceased demise on 20-8-2005? Why was it difficult to have the suit property transferred to the applicant?

Great emphasize was relied on by the petition on the proceedings before the area chief on 2nd and 9th March, 2009 and its decision on 8-4-2010. First of all the dispute involved one Andiwo Mwai and himself and had nothing to do with the applicant herein.

Secondly, and of great significance, at the time of the alleged chief's Baraza nobody had been granted letters of administration to enable him or her transact the business in respect to the land in question. The letters of administration were issued to the respondent on 6-5-2010 and therefore any decision in respect to the deceased estate was superfluous and of no consequence whatsoever.

Having said that I do not find that the applicant is a dependant in terms of the law of Succession Act. His interest should be addressed in another forum and in particular may be the Land and Environmental court. If he purchased the suit property then he should pursue the two vendors. In any event he did not dispute the respondents assertion that there was a dispute between the deceased and the applicant where the suit property was divided into two portion and he took parcel No. 3323.

Consequently, the objection proceedings is dismissed with costs to the respondents.

Dated, signed and delivered at Kisumu this 17th day of November, 2014.

**H.K.
JUDGE**

CHEMITEI