



REPUBLIC OF KENYA

High Court at Machakos

Succession Cause 941 of 2009

IN THE MATTER OF THE ESTATE OF **KUYA OLE SAISI LOLNGONYA – DECEASED**

JAMES SANKALE MASEENKE.....1ST APPLICANT

RICHARD KANANA MASSEY on behalf of the late JOHN MARK

KISOKON MASSEY.....2ND APPLICANTS

VERSUS

KORENTI KUYA SAISI.....1ST DEFENDANT

KONAI KUYA SAISI.....2ND DEFENDANT

RULING

Introduction

1. The late Kuya Ole Saisi, late John Mark Kisokon Massey and James Sankale Ole Maseenke the 1st Applicant herein registered as proprietors in common in respect of title No. Kajiado/Meto/62 in the year 1978. The title deed was actually issued in their names on 9th December, 2005. This was after John Kuya Ole Saisi and Mark Kisokon Massey passed on the 7th July, 1998 and 7th December, 1984 respectively.
2. Following the death of Kuya Ole Saisi Lolngonya letters of administration in respect of his Estate were granted to Karenti Kuya Ole Saisi and Kunai Kuya Saisi (see annexure “JSM-1a” to the supplementary affidavit.
3. By an application dated 6th November, 2009 the applicants now seeks this court’s order revoking and/or annulling a grant made in succession Cause No. 1/2003 apportioning title No. Kajiado/Meto/62 to the respondents, the administratrix of the estate of Kuya Ole Saisi who were entitled to half the portion by virtue of inheritance rights.
4. The application is supported by an affidavit sworn by the applicant who avers that the grant and confirmation thereof were obtained fraudulently as the respondents deliberately concealed from the court the fact that the estate of Kuya Ole Saisi was only entitled to half the three (3) acres.

Analysis

5. A grant of representation may be revoked or annulled by the court if it is established that it was obtained fraudulently by making of a false statement or by concealment of any material fact to the case

from the court (**see section 76(b) of the Law of Succession Act Cap 160 (K)**).

6. It has been established by way of affidavit evidence that parcel No. Kajiado/Meto/62 measuring 3.0 hectares was indeed divided into three portions. The letter of consent dated 14/8/1984 indicate names of parties entitled to it as Kuya Ole Saisi, John Mark Kisokon Massey and James Sonkale Ole Maseenke. A search certificate dated 28/12/2005 show proprietors were the three aforementioned.

7. It is averred in paragraph 13 of the affidavit in support of the application that the respondents herein obtained confirmation of the grant of succession cause No. 14/2003 lodged at Kajiado Principal Magistrate's Court by virtue of a consent recorded on 9th July, 2004 apportioning title No. Kajiado/Meto/62 between themselves.

8. The supplementary affidavit in support of the application only alludes to a grant of letters of administration in succession cause No. 14/2003. This is indeed proof that letters of administration intestate of the estate of Kuya Ole Saisi Lolngonya were granted to Kaventi Kuya Sais and Konai Kuya Saisi. What was not established is if the grant of letters of administration were indeed confirmed as alleged.

Conclusion

9. Although the respondents in this matter did not file a response to the application the applicant had a duty of proving the existence of a confirmed grant of letters of administrators (**see section 107 of the Evidence Act**).

10. The applicant has demonstrated that indeed the estate of Kuya Ole Saisi would in the circumstances not be entitled to all portions of land comprising title Kajiado/Meto/62. However, without evidence of a certificate of confirmation issued to the respondents distributing property among them as alleged, this court would have no reason to annul or revoke the grant of letters of administration intestate issued in Senior Resident Magistrate's Court, Kajiado No. 14 of 2003.

11. The application is therefore dismissed with no orders as to costs.

DATED, SIGNED and DELIVERED at MACHAKOS this 12TH day of APRIL, 2013.

L.N. MUTENDE

JUDGE