



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Succession Cause 249 of 2010

IN THE MATTER OF THE ESTATE OF KM - DECEASED

SKK.....APPLICANT

VERSUS

AHK.....RESPONDENT

RULING

This Ruling relates to a Chamber Summons dated and filed on 20th January 2011 brought under the provisions of Section 45 and 47 of the Law of Succession Act (*Cap. 166, Laws of Kenya*) and Rule 73 of the Probate and Administration Rules for orders *inter alia* - to restrain the Respondent from intermeddling and/or selling, transferring or dealing in any other way with land parcel Title Number Mau Summit/Molo Block 5/181.

The Applicant and Respondent are son and mother. The Applicant claims that the mother obtained the Grant of Letters of Administration irregularly and fraudulently. The Applicant claims that he was all along in possession of the original Death Certificate of his late father KM and does not know how or where his mother obtained the other Certificate of Death she used in applying for the Grant of Letters of Administration, hence the claim of irregular and fraudulent obtention of the Grant.

The mother, the Respondent, admits that the Applicant is her son, but avers that he has been irresponsible, he was given a parcel of land known as Mau Summit/Molo/Block 5/182(*Molo*), and that the Applicant sold the Plot to one DG, and that having sold his plot he was now encroaching upon his sister's Plot No. 181.

Family disputes are hard to resolve and more so if they are between child and parent. One would expect respect for the parent from the child - but as this application shows, that expectation cannot be assumed or taken for granted in our society today. It is rare for a child to charge its parent of a fraudulent act, particularly in relation to the family estate.

It is therefore easy to disregard such disputes as acts of a disrespectful child, or son s in this case. There is however some curiosity in this matter.

The deceased had two houses. The Respondent depones in her Replying Affidavit of 17th January 2011 that she could not have disregarded her son as she had even brought in the distribution, the children of her co-wife, and had included the Applicant as one of the survivors of the estate of her late husband.

Whereas the Respondent's Affidavit sworn on 31st August 1999 in support of the Confirmation for Grant of Letters of Administration in Molo SRMC Succession Cause No. 4 of 1997 does indeed include the Applicant in para. 2 thereof and does further make reference to Plot No. 5/182 (*Molo*) the Certificate of Confirmation of the Grant issued on 31st August 1999 that plot along with Plots Nos. 5/182, and 5/5 (*Molo*) and Molo South/Ikumbi 3/73 (*Molo*) are stated to be held in the name of AHK (*the Respondent*) in trust for JM, MK, PM and SM. The Applicant's name SKK is conspicuously absent.

If the Respondent gave Plot 5/182 to the Applicant, there was no evidence of how that plot was given to the Applicant. And since it was held in trust for children other than the Applicant, there would be need to show that the named beneficiaries were informed and agreed to the allocation of Plot 5/182 to the Applicant. There was no indication of such consent in the Replying affidavit.

For those reasons, the applicant's contention for restraining order has a high probability of success, and since the Respondent is currently holding (*according to the Certificate of Confirmation of the Grant*) all the properties including Plot 181 in trust for other children, except the Applicant, the applicant is likely to suffer loss and damage if the restraining orders are declined. I think it is also on the balance of convenience for both the Applicant and Respondent that restraining orders pending the determination of the whole question of succession to the estate of the late KM, father to the Applicant, and husband to the Respondent is made.

The Chamber Summons of 20th January 2011 therefore succeeds in terms of paragraph 3 thereof. I direct that costs be in the cause.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 8th day of June, 2012

M. J. ANYARA EMUKULE
JUDGE