



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Succession Cause 62 of 2009

JULIUS MORACHA MATUNDURA 1ST PETITIONER/APPLICANT
DANIEL ABUTA MATUNDURA 2ND PETITIONER/APPLICANT

VERSUS

ANNA NYABOKE MATUNDURA RESPONDENT

RULING

The Petitioners filed an application seeking an order of inhibition to inhibit the transfer charge and/or any other dealing in respect of L.R. NO KISII TOWN/BLOCK II/66, hereinafter referred to as **“the suit property”** which is part of the estate of **Teresa Nyanhero Matundura**, hereinafter referred to as **“the deceased.”** The petitioners also sought a nullification of the transfer and registration of the suit property in the name of the respondent in place of the deceased. They further sought an order directing rectification of the register in respect of the suit property by deleting the name of the respondent and restoring the name of the deceased as one of the owners of the same. The application was supported by an affidavit sworn by the 1st petitioner. The petitioners are sons of the deceased. The deponent stated that he had obtained permission and/or consent of the two other beneficiaries of the deceased’s estate with a view to administering the estate. The petitioners were granted letters of administration intestate of the deceased’s estate on 23rd April 2009. At the time of taking the letters of administration the suit property was lawfully registered in the names of the deceased, Sospeter Moindi and Siro Mogaka, each holding one third share thereof. However, on 23rd November, 2009 the respondent sought for and obtained grant of letters of administration **Ad Litem** in respect of the estate of Johnson Matundura who is also deceased. By that time Grant of Letters of Administration in respect of the estate of Johnson Matundura had been issued and confirmed on 20th July 1993 vide **Succession Cause No. 191 of 1991** at Nairobi. Paul Matundura and Clement Matundura were named as the Administrators thereof.

Upon obtaining Letters of Administration Ad Litem, the respondent proceeded to the land registry at Kisii and caused the name of the deceased to be removed from the suit land and replaced by his own name. The petitioners averred that the grant of letters of administration Ad Litem did not authorize the respondent to appropriate and/or alienate the estate of the deceased. The transfer was therefore unlawful.

The 1st petitioner further stated that the deceased’s share in respect of the suit property had been bequeathed to him by the deceased vide her written wish dated 22nd October 1996. He further stated that unless the orders sought are granted the respondent is likely to sell the suit land.

The respondent is a sister of the petitioners. Their parents, **Johnson Matundura** and **Teresa Nyanhero Matundura** died on 5th May 1987 and 16th June 2001 respectively. The respondent stated that she obtained letters of administration Ad Litem for the purposes of “**Execution, Extension and Preservation**” of the suit property whose lease term had expired. At the time the lease document had been sent from the office of the Commissioner of Lands, Nairobi, to Kisii Lands Registry for execution and extension of the lease. She further stated that the entire family decided to have the lease extended so as to safeguard the property. She added that she was holding the suit property in trust for members of the family including the petitioners and that she had no power to own or sell the same.

The respondent further deposed that the petitioners had already illegally sold the suit property to one **Naftali Ondieki** and that was the reason for filing the present application. She urged the court to dismiss the petitioners’ application.

What is the propriety of the letters of Administration Ad Litem that were obtained by the respondent on 23rd November 2009? The said limited grant was for the purposes of execution, extension and preservation of the lease in respect of the suit property. It was obtained in the matter of the estate of Johnson Matundura. However, at the time of its issue, letters of administration in respect of the said estate had been granted and confirmed. That was in **succession cause no. 191 of 1991 at Nairobi**. Paul Matundura and Clement Matundura T. Matundura were named as the Administrators of the estate. In view of the foregoing, no grant of Letters of Administration Ad Litem could issue in respect of the estate of Johnson Matundura. In any event, the certificate of confirmation of the said grant shows that the estate of Johnson Matundura had been distributed as shown therein. It is also evident from the certificate of confirmation aforesaid that the suit property had been alienated and registered in the name of **Teresa Nyanhero Matundura**. All the above information was not disclosed to the court that issued the letters of administration Ad Litem.

Consequently, the application by the respondent was made fraudulently and without disclosure of material facts. The Letters of Administration Ad Litem is hereby revoked. All the actions taken by the respondent pursuant thereto were illegal. The transfer and registration of the suit property in the name of the respondent is hereby declared null and void. The District Land Registrar, Kisii, is directed to delete the name of the respondent from the register and restore the name of Teresa Nyanhero Matundura as there before, as one of the owners in common of the suit property.

Though the respondent has in her replying affidavit raised some important issues relating to the suit property, those issues can only be resolved in the appropriate manner but not by way of hood winking the court to issue an improper grant. The respondent shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 17TH DAY OF MAY, 2010.

D. MUSINGA
JUDGE.

17/5/2010

Before D. Musinga, J.

Mobisa - cc

Mr. Ongige for Me. Oguttu for the Applicant

Mr. Okenye for the Respondent

COURT: Ruling delivered in open court on 17th day of May, 2010.

**D. MUSINGA
JUDGE.**