



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO. 26 OF 1995

IN THE MATTER OF THE ESTATE OF THE LATE

JOSEPHINE V.N. PYMAN – (DECEASED)

1. **JAMES KAMAGENO KIBUCHI**
2. **JAPHET MANALI WEKESA**
3. **DANIEL NAFULA NAMASAKA**
4. **DAVID NAMASAK KHUMAYA**
5. **ANTHONY MUKARU KAMAU**
6. **PAUL MWOLOLO MUTEVU**
7. **DANIEL MUTISYA NDOLO**

..... **APPLICANTS**

VERSUS

1. **KEZIAH STELLA PYMAN**
2. **MARK GRIFFITHS PYMAN**
3. **REENA PYMAN**

.....
 **RESPONDENTS**

RULING

The seven (7) applicants have taken out these Summons under section 76(b) of the Law of Succession Act Cap. 160 of the Laws of Kenya and Rules 73 and 74 of the Probate and Administration Rules and all other enabling provisions of law. They pray that the respondents be jointly and severally restrained from entering, alienating, obtaining title deeds and/or in any way interfering with the applicant’s plots numbers N, Q, J, J, A, L and C which form part of the land known as LR. No. 3036/5, pending the hearing and determination of the application. There is a prayer for the revocation and annulment of the Grant to the substituted administrators and a prayer in the alternative that the Grant of Representation be rectified to include the applicants as beneficiaries of the estate of the late **Josephine V.N. Pyman** and they be provided with their respective shares of the land known as LR.No.3036/5.

That application is brought on the grounds that the Grant was obtained fraudulently by concealment of material facts as to who the true beneficiaries were and the respondents had resulted to using the provincial administration to harass the applicants with a view to evicting them from their rightful entitlements and further that the respondents were processing title deeds without regard to the applicants’ proprietary rights. The supporting affidavit was sworn by the 1st applicant on his own behalf and that of the 2nd and 3rd applicants and the same strengthens the application and annexes various supporting documents. The applicants stated that they are in actual possession of the properties.

The Replying Affidavit is sworn by the 1st respondent. In it she deposes that the applicants are not

beneficiaries of the estate of their late grandmother and whatever transactions they undertook with one John Pyman the original administrator of the estate in issue were illegal and improper and the applicants' further actions intended towards a transfer of portions of the deceased's land are fraudulent and must not be enforced by this court. They pray that the application be dismissed. The respondents also filed a supplementary affidavit on 29/02/2008 in further support of their position that the application under consideration is for dismissal.

Learned Counsel Mr. Mokokoros for the applicant submitted that the applicant's fact of having bought land was not disputed save that such sale was before Grant of representation was issued and now that the necessary consents to transfer had been obtained then the substituted administrators should be made to transfer the respective portions of LR. No.3036/5 to the respective buyers who are the applicants.

Learned Counsel Mr. Kitur for the Respondents submitted that the application is bad in law and fatally defective and must fail.

I have given the application due consideration. It is admitted that the late **Josephine V.N. Pyman** was at all material times the registered proprietor of all that parcel of land known as LR.3036/5. The late Josephine V.N. Pyman died on 18th June 1990 at Kitale Nursing Home. She was survived by her two sons John and Robert. Her son John Pyman was appointed Administrator of her estate on 06.07.1995. He did not administer the said estate as by law required and he was therefore substituted by the Respondents herein who were appointed joint administrators of the estate of Josephine V.N. Pyman. One of the beneficiaries of the late Josephine V.N. Pyman, Robert died on 09.12.2002 and was survived by the three Respondents herein. The Grant of Letters of Administration intestate was confirmed and on 17.07.2003 a Certificate of Confirmation of a Grant issued. The final undisputed fact is that John and Robert during their lifetime entered into agreements of sale with the applicants, amongst others, for the purchase of part of Josephine's land known as LR.3036/5.

In the above circumstances it is evidently clear that none of the applicants herein entered into any sale agreement with the late Josephine V.N. Pyman during her lifetime. It is also evidently clear that none of them was in any way whatsoever her heir or beneficiary. It follows therefrom that none of the applicants have a valid claim against the estate of the late Josephine V.N. Pyman that emanated from any dealings with the late Josephine V.N. Pyman or as her beneficiaries as claimed. The alleged sales of parts of the property of the deceased, Josephine V.N. Pyman by her sons were improper as none of them (sons) had any Grant of Representation of her estate during the period of the alleged sales which is between 13/10/1990 and 6/2/1995. John was appointed Administrator of the said estate on 06.07.1995 and did not bother to administer the estate or even attempt to get the Grant confirmed. Neither he nor his brother Robert had any legal authority to deal with the deceased's estate as they allegedly purported to deal. That was contrary to the provisions of the Law of Succession. The Applicants' remedy therefore lies not in these Succession proceedings. Having come to that considered view I must dismiss with costs the applicant's summons filed herein on 11.10.2007 as the applicants are most definitely non-suited to bring the application which application is in turn unmaintainable. Application under consideration is therefore dismissed with costs.

DATED SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF DECEMBER 2010.

**P.M. MWILU
JUDGE**

In the presence of;

Advocate for Applicants

Advocate for Respondents

Court Clerk

**P.M. MWILU
JUDGE**