

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Succession Cause 468 of 2004

MOHAMED IDI APPLICANT

VERSUS

JUDDAH K. MBIJIWE RESPONDENT

RULING

The applicant has, in this case a grant of representation in respect of one Joshua Muthee Muketha, now deceased, which grant was confirmed on 18th October 2006.

The applicant contends that he purchased from the said Joshua Muthee Muketha (the deceased) parcel of land No. EX-LEWA SETTLEMENT SCHEME/745 on 3rd June 1987. In 1996 the deceased died before transferring the suit land to the applicant. In 1988 the applicant occupied the suit land and put up houses. Unknown to him the land had been transferred by the deceased person's mother to the respondent. He contends that the transfer was fraudulent and illegal.

That the deceased person's mother, Eliza Mukatho was charged in Meru CM Cr. Case No. 2094 of 2006. That the alleged fraudulent transfer was effected through Succ. Cause No. 169 of 2005. In the instant application he seeks the cancellation of the respondent's title and the suit land be registered in his name.

The respondent in his replying affidavit has confirmed that he purchased the suit property from the mother of the deceased at a consideration of Kshs. 100,000/=. That he was not aware that the deceased had sold the suit land to the applicant since he confirmed that the mother of the deceased had a good title. He has denied being involved in a fraud and maintains that the sale transaction was legal.

He has also confirmed that indeed the mother of the deceased was prosecuted in relation to the sale transaction. That he was a prosecution witness.

I have considered the rival arguments. It is apparent to me that two succession causes were filed by the mother of the deceased and the applicant in respect of the estate of the deceased. Both appear to have obtained the grant. However, the deceased's mother appears to have moved faster than the applicant by obtaining a transfer in her favour which enabled her to alienate the same to the respondent.

I have not seen the second succession cause in which the mother of the deceased obtained letters of administration. However, the documents exhibited in this cause indicate that the suit land is registered in favour of the Settlement Fund Trustees. It is not clear to me how the applicant expects this court to order cancellation of registration of the suit property to the respondent without evidence that the suit property was in the first place registered in favour of the deceased and secondly that it is currently registered in the name of the respondent without evidence of such registration.

The orders sought herein are drastic and substantive and cannot be determined without presentation of oral evidence. I may only add that the criminal prosecution of the deceased's mother was not concluded following her death before judgment.

In the result this application fails and is dismissed with costs to the respondent.

Dated and delivered at Meru this 21st day of January 2009.

W. OUKO

JUDGE