



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
PROBATE & ADMINISTRATION 153 OF 2007

JAVAN MASIKA NATEMBEYA :::::::::::::: DECEASED

VRS

NATEMBEYA MASIKA :::::::::::::: PETITIONER

AND

JULIUS KATO NATEMBEYA :::::::::::::: APPLICANT

RULING

This is a ruling on the application of one Julius Kato Natembeya hereinafter referred as the Applicant dated 16/02/2009. The Respondent, Natembeya Masika is the petitioner in this cause and a beneficiary of the deceased's estate.

The application has three main prayers:

- 3) That the administration of this estate by the Petitioner be stayed pending the hearing and determination of this application.**
- 4) That the grant of letters of administration issued to Natembeya Masika the Petitioner herein on 30th November, 2007 and confirmed on 30th October, 2008 be revoked and/or annulled.**
- 5) That subject to prayer 3 above, the Applicant Julius Kato Natembeya be granted leave to apply for grant of letters of administration intestate of the estate of Masika Natembeya.**

Prayer 1 was disposed of in the first instance while prayer 2 has been overtaken by events.

The brief facts leading to this application are that the Respondent petitioned to this court for letters of administration intestate in the estate of his deceased father Javan Masika Natembeya. He was issued with letters of administration intestate on 30/11/2007.

The grant was confirmed on 30/10/2008 with distribution of shares in terms of the petitioner's affidavit. The Applicant seeks for annulment of the said grant on grounds that the grant was

obtained through fraud and misrepresentation. In his supporting affidavit the Petitioner deposes that documents presented to the court in this petition were the wrong ones which led to a parcel of land belonging to the Applicant being shared by the beneficiaries in this cause, namely *BOKOLI/MUKUYUNI/317*. The rightful heir for the deceased's land L.R. NO.317 is the Applicant. The land is registered in the name of his deceased father Natembeya Masika. The Respondent can only be an administrator and heir of his own deceased father's estate Javan Masika Natembea.

To his supporting affidavit the applicant annexes a death certificate of his deceased father Natembeya Masika showing that deceased died in 1966 at Chwele Location, Mukuyuni. The Applicant contends that the death certificate used in this cause is that of the deceased father of the Petitioner Javan Masika. The Respondent is a grandson of the deceased Natembeya Masika and cannot inherit from him because deceased has several sons. He therefore urges the court to revoke the grant.

The Respondent opposes the application on the grounds that the land No.317 though registered in the names of his grandfather was being used by the Respondent's deceased father Javan Masika Natembeya after it was given to him together with L.R. No. 318. the respondent's father registered the parcel No.318 in his name but left No.317 in the name of his father Natembeya Masika. The Respondent therefore contends that he has the right to inherit what his father Javan had been given by Respondent's grandfather.

From this application and from the court record, I make a few observations. This succession cause is filed in respect of the deceased's estate Javan Masika Natembeya. The death certificate and all the P&A forms lodged in court show that the deceased is Javan Masika Natembeya, the Respondent's father who died on

6th August, 1999.

The same names of the deceased appear on the court file cover. The respondent is the Petitioner according to the court record. However, Form P&A 5 paragraph 6 listing the assets of the deceased gives only one asset for distribution namely land parcel *No.BOKOLI/MUKUYUNI/317*. A certificate of search filed together with Form P&A 5 an issued on 14/9/2007 shows the registered proprietor of the land as Natembeya Masika with registration having been secured on 13th December, 1964.

The Respondent in his reply to the application said his grandfather allocated the Applicant parcel No.419. No documents were annexed to the replying affidavit for that parcel. He does not deny that he presented to court parcel No. 317 belonging to another person other than the deceased in this case for distribution among the heirs. The result is that the heirs of the deceased herein Javan Masika Natembeya have inherited the land of another person altogether. This was parcel number 317 belonging to their deceased grandfather Natembeya Masika. The parcel No.318 in the name of the deceased herein was not presented in court for distribution although it is the one registered in the name of the deceased herein. This is the land where the brothers of the Respondent live. It is not known when succession for that parcel of land is intended to be done. The question is whether the Respondent and his brothers are going to file a second succession cause for that purpose.

I am satisfied that the Applicant has shown fraud on part of the Respondent/Petitioner in this cause. He misrepresented the estate of the deceased by filing document of someone else's property. The Respondent and his brothers are not a rightful heir of their grandfather and this renders the inheritance in this cause unlawful.

The grant in this cause and the confirmation thereon were obtained fraudulently thus rendering them void *ab initio*.

I find the application merited and nullify the grant and all consequential orders as prayed. The sub-division of land parcel *No. BOKOLI/MUKUYUNI/317* and registration of the respective parcels are hereby cancelled.

I do not need to grant any leave to the applicant herein to apply for grant of letters in respect of his deceased father's estate Natembeya Masika as prayed in prayer 5. He will file the succession cause upon cancellation of the respective titles. Prayer No.3 is also allowed as prayed.

The Applicant is awarded costs of this application. This order will be served on the District Land Registrar in the relevant land registry.

Dated, Delivered and Signed at Bungoma this 14th day of May, 2009. In the presence of both parties.

F. N. MUCHEMI

JUDGE