



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Succession Cause 207 of 2003**

**IN THE MATTER OF THE ESTATE OF MUSA ARAP SENJE**

**AND**

**SOLOMON MAINA:.....APPLICANT**

**AND**

**COUNTY COUNCIL OF NANDI:.....RESPONDENT**

**RULING**

By summons brought under S.76 of the Succession Act and Rule 44 of the Probate and Administration Rules SOLOMON MAINA the son of the estate MUSA ARAP SENJE applied that the Grant of Letters of Administration in respect of his late father's estate issued on the 28<sup>th</sup> August 1998 to the County Council of Nandi be annulled on the grounds that the proceedings to obtain the grant were defective and further that the grant was obtained by means of an untrue allegation of a fact essential in point of law. The application is supported by the Affidavit of the applicant wherein he deposes that the County Council not being a body corporate did not qualify to apply for a grant of Letters of Administration over the estate of his late father. That there were no citations issued to persons having an equal right to apply and such persons having equal right to apply did not consent to the County Council of Nandi so applying.

Learned counsel for the applicant **Mr. Manani** at the oral hearing reiterated the above and stated that the only body corporate allowed by law to apply for Grant of Letters of Administration are the Public Trustee and a Trust corporation none of which the County Council of Nandi is. He stated that the County council of Nandi was not given priority over the sons of the deceased.

The application was opposed and there was filed a Replying Affidavit sworn on the 18<sup>th</sup> July 2008 by Henry Loyolmoi described as the Town clerk to the County Council of Nandi. He deposes that the County Council of Nandi obtained a grant limited only to the parcel of land known as **Nandi/Serem/3** and which land belonged to the deceased and which the deceased had exchanged with the County Council's land known as Former Dr. Bell's farm LR. No.1763/1. He adds that the Grant was obtained by the Council with the full knowledge of the sons of the deceased and the sons themselves obtained a Grant of Letters of Administration of the estate of their late father in Kapsabet succession cause No.59 of 2002 and a copy of the Grant was annexed to the Replying Affidavit. The exchange of the parcels of land between the deceased and the Council had taken place during the deceased's lifetime and the deceased have moved on to the exchanged parcel of land with his family and settled there. The Replying Affidavit adds that the motive of the sons now in applying for annulment is because they have sold part of the exchanged land and are attempting to take back the portion their father exchanged with the Council which portion is not available as the same has been set aside as a public utility. **Mr. Kamau** learned counsel for the Respondent relied fully on the Replying Affidavit.

I have considered the application and all the annexures and submissions by both counsel appearing. I find that the County Council of Nandi obtained a Grant of Letters of Administration over the estate of the deceased herein in respect of parcel of land known as LR. Nandi/Serem/3 and to that extent only. The Grant was confirmed on 30<sup>th</sup> September 1999. The applicant's case is that the Council did not qualify to

apply for the Grant. S.66 of the Law of Succession gives the preference of those to apply. At (d) of the said section are listed creditors who the law allows to apply for Grant. I have seen the annexures marked "HL/2." This letter by a member of the family of the deceased herein written on behalf of other family members acknowledges that land was allocated to them and the only complaint was that the land was swampy. The Council added some two acres to them. I think the County Council brought itself squarely the place of a creditor by the exchange of the land. The family of the deceased also acknowledges the Council as such and continued to live on the exchanged parcel of land and left their father's original parcel to the council.

The family of the deceased obtained a Grant of Letters of Administration of the estate of their father. No further or a supplementary affidavit was filed to rebut and/or contradict what is stated in the Replying Affidavit. The court was not told of the defect in the proceedings leading to the Council obtaining their Grant and the application has not brought itself within the ambit of S.76 of the Law of Succession to avail himself an annulment of the Grant. Any claim the sons of the deceased including the applicant may have against the council must be pursued in the civil courts not under probate.

The upshot is that this application must fail and the same is dismissed with costs.

**DATED AND DELIVERED IN ELDORET THIS 13<sup>TH</sup> DAY OF MAY, 2009**

**P.M.MWILU**

**JUDGE**

**IN THE PRESENCE OF:-**

Paul Ekitela - Court Clerk

Mr. Manani Advocate for the Applicant

Mr. Lwanga Advocate for the Respondent.