



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Succession Cause 190 of 2005

MAOSA MOENGA-----DECEASED

AND

HELLEN MORAA MAOSA-----PETITIONER

VERSUS

PHILLIP BUNDI ONCHARI & 10 OTHERS-----OBJECTORS

RULING

On 9th November, 2005 this court granted Letters of Administration Intestate of the estate of Maosa Moenga (deceased) to Hellen Moraa Maosa, Zacharia Mongera Maosa and Mongera Maosa, hereinafter referred to as “the administrators”. Before the grant could be confirmed, the following objectors applied for annulment and / or revocation of the same:

Phillip Bundi Onchari, Peterson Keango Ongago, Tom Mongare Moraa, Lawrence Nyaberi Momanyi, Daniel Misati Gerosa, Andrew Monyoncho Kombo, Thomas Ocharo Misati, Mbane Moraa George, Charles Sitima Basweti, Charles Morwabe and Grace Kerubu Gesu.

The aforesaid objectors stated that the grant was fraudulently obtained by false misrepresentation and concealment of material facts. They further stated that they are purchasers of some of the deceased’s estate yet they were not so disclosed.

One of the administrators, Zacharia Mongera Maosa, filed an affidavit for and on behalf of the other administrators. He stated, inter alia, that at the time of his death, 16th July, 1985, the deceased was the proprietor of **L.R NO. WEST MUGIRANGO/ SIAMANI/744**.

The deceased was polygamous and at the time of his death he had not sold any part of the said land to any of the objectors. The objectors are not therefore beneficiaries of the deceased’s estate.

During the hearing, three objectors testified. **Lawrence Nyaberi Momanyi, PW1**, stated that in 2004 Erustus Nyangwara Maosa, a son of the deceased, sold to him a parcel of land measuring 50 by 200 feet at a price of ksh. 35,000/=. Later on he purchased another parcel of land measuring 75 by 100 feet from the same vendor at a consideration of ksh. 45,000/=. He has paid all the money save for a balance of ksh.15,000/= whose payment was awaiting finalisation of this case. The parcels of land aforesaid were to be excised from L.R. No. WEST MUGIRANGO/SIAMANI/744 which PW1 knew was registered in the

name of the deceased. PW1 said that the deceased was polygamous and had divided his land between his two houses and also amongst all his sons. Erastus Nyangwara Maosa, who is now deceased, was purporting to sell his share of the deceased's land.

In cross examination, PW1 stated that he was aware that letters of administration in respect of the deceased's estate had not been obtained when he was entering into the aforesaid sale agreements with the late Erastus Nyangwara Maosa. He also stated that he planted tea bushes on the parcel of land that he purchased.

Tom Mongare Morara, PW2, also purported to purchase a parcel of land measuring 25 x 100 feet from the said Erastus Nyangwara Maosa. The purchase price was kshs.178,000/- which he paid in installments. The sale agreement was entered into on 31st October, 2003. PW2 said that he has built on the land and planted nappier grass.

Philip Bundi Onchari, PW3, gave similar evidence. He purported to have purchased a parcel of land measuring 95 x 150 feet from Erastus Nyangwara Maosa at a price of kshs.100,000/-. The transaction was done on 28th May, 2004. PW3 has also planted tea bushes on the parcel of land that he allegedly purchased.

The administrators opted to adduce no evidence but their advocates, Mr. Momanyi and Mr. Nyachiro made submissions. They submitted that all the transactions alluded to by PW1, PW2 and PW3 were done after the death of the deceased. Erastus Nyangwara Maosa had no capacity to sell any part of the deceased's estate. They further submitted that the objectors had no **locus standi** to object to issuance of a Grant. They did not demonstrate that there was privity of contract between them and the deceased. The alleged sale agreements were also not sanctioned by the area Land Control Board.

Section 45 of the Law of Succession Act Provides as follows:

“45(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration”.

Erastus Nyangwara Maosa and the objectors were clearly intermeddling with the deceased's estate. They all knew that Land Reference number WEST MUGIRANGO/SIAMANI/744 belonged to the deceased and no one had capacity to sell the same or any part thereof after the death of the registered proprietor before Grant of letters of Administration of the deceased was issued and confirmed. It matters not that the deceased's son was purporting to sell what he verily believed was his share of the deceased's estate. As long as he was not holding a confirmed Grant of representation, the deceased's son could not lawfully sell any portion of his late father's property. The objectors can be prosecuted for intermeddling with the deceased's estate.

The objectors' application lacks legal basis and must be dismissed with costs, which I hereby do. The objectors should pursue the estate of Erastus Nyangwara Maosa for refund of their money since they have no right over any portion of the deceased's property.

DATED, SIGNED AND DELIVERED AT KISII THIS 16th DAY OF June, 2009

D.MUSINGA.

JUDGE