



REPUBLIC OF KENYA
HIGH COURT AT KISII
SUCCESSION CAUSE 18 OF 2005

IN THE MATTER OF THE ESTATE OF ISMAEL HAMISI FADHMULLAH
..... (DECEASED)

AND

NUSURA ABDULLAHI SHABAN

AHMED ISMAEL HAMISI PETITIONERS

VERSUS

IBRAHIM SEBI OBJECTOR

RULING

By an application dated 17th October, 2007, the objector sought the following orders:

**“ 1. That the grant of letters of administration made
to the petitioners/respondents herein on the
14th day of March, 2005 and confirmed on the
30th day of November, 2005 be revoked and/or
annulled on the grounds that –**

**(a) The same was obtained fraudulently by
the making of false statements and by
the concealment from the court of facts**

material to the case.

- (b) The proceedings to obtain the grant were defective in substance.**
- (c) The grant was obtained by means of an untrue allegation of facts essential in point of law to justify the grant.**
- (d) The respondents did not first obtain consent from the other dependants of the deceased before taking out letters of administration.**
- (e) The respondents failed to inform this Honourable court that the deceased had sold the whole of land reference number KERICHO/KAPTELARTET/1329 to the objector/applicant herein.**
- (f) The respondents failed to inform this Honourable court that the objector has been in quiet open and exclusive occupation of the said parcel of land since 1983 to date.”**

The said application was supported by an affidavit sworn by the objector. The first petitioner filed a reply to the said affidavit. Parties agreed by consent that the said application be disposed off by way of *viva voce* evidence.

The objector is a business man and stays at Sondu market. He testified that **Ismael Hamisi Fudamola**, hereinafter referred to as “**the deceased**”, sold to him a parcel of land known as **KERICHO/KAPTELARTET/1329**, herein after referred to as “**the suit property**” way back on 13th November, 1983 at a price of Kshs. 13,500/= . The suit land measured 0.6 hectares. He produced a sale agreement (**P. Exhibit 1**) which was witnessed by several people. The objector occupied the land from 1983 to 1998. The deceased died in 1998 before he had effected transfer of the suit property to the objector.

Following the death of the deceased, the objector started to make efforts to obtain title for the said property from the deceased’s family members. Sometimes in 2006 the objector instructed an advocate to file a citation against the petitioners in the High Court of Kenya at Kericho. His advocate filed succession cause No. 9 of 2006. The petitioners were served but they did not attend court nor file any papers. Instead they filed this succession cause and proceeded to obtain grant of letters of administration of the deceased’s estate. The grant was issued on 11th March, 2005 and was confirmed on 30th November, 2005. Thereafter the suit property was registered in the joint names of the petitioners. That was done without the knowledge of the objector who was all along in occupation of the suit property.

There before the objector had presented his claim over the land before the local elders, the area Assistant Chief and the Chief as well as the area Land Disputes Tribunal. It had been decided by the aforesaid authorities that the objector was the rightful owner of the suit property.

The objector denied knowledge of the first petitioner. He said that the deceased had told him that he

had married a certain lady but they divorced and she was living with another man. As regards the 2nd petitioner, the objector admitted that he is a son of the deceased.

Ezekiel Arap Soi, PW2, was 83 years old when he testified before this court. He was one of the witnesses to the sale of the suit property by the deceased to the objector in 1983. He said that following the objector's purchase of the said property, the objector took possession of the same and started developments thereon. He further testified that at the time of the sale of the land, the deceased had already divorced his wife. This witness was not cross-examined by the petitioners' advocate.

The objector also called as a witness **Ramadhan Kipkemoi Cheruiyot, PW3**, who was also a witness to the sale of the suit property. He corroborated the evidence of PW2 in all material aspects. He added that after the death of the deceased, his children stopped the objector from using the land.

The first petitioner testified that she got married to the deceased in 1963 and together they were blessed with four children. She denied that she was ever divorced by the deceased but conceded that in 1983 they were not living together, she was living in Kisii town. She said that the deceased did not tell her that he had sold the suit property to the objector. She contended that the grant of letters of administration of the deceased's estate was properly obtained.

The second petitioner also said that he was not aware that the deceased had sold the suit property to the objector. He alleged that he was in rightful occupation of the suit property. He added that if at all the objector had paid any money to his deceased father on account of the suit property he was ready to refund the same.

The petitioners were registered as proprietors of the suit property on 19th December, 2005 when they were issued with a title deed under the provisions of the **Registered Land Act**. This was not a first registration. The register for the original parcel of land before it was sub divided was opened on 13th October, 1994. The suit property is within Sondu township. There is evidence that the objector purchased the same on 13th November 1983. He took possession of the same immediately thereafter. He was in quiet possession and occupation thereof until 1998. The petitioners' contention that they did not know that the deceased had sold the suit property to the objector cannot therefore be true. There is also sufficient evidence that the land dispute had been handled by several persons including the area Land Disputes Tribunal before whom all the parties and their witnesses who testified in this court appeared sometimes in 2003. The said tribunal held in favour of the objector. The petitioners did not challenge that decision.

The petitioners were aware of the objector's interest over the suit property long before they applied for letters of administration of the deceased's estate. The objector had served upon them an application for citation to accept or refuse letters of administration which he had filed vide **Succession Cause No. 9 of 2006 at Kericho**. When they came before this court, the petitioners did not disclose the objector's interest over the suit property. They acted fraudulently. Their acquisition of the title deed over the suit property cannot be justified in law. Consequently, I allow the objector's application and hereby revoke the grant of letters of administration issued to the petitioners herein. For avoidance of any doubt I declare that the petitioners have no right over the suit property. The objector is at liberty to take such legal steps as may be appropriate to enable him acquire a title deed for the said property. The petitioners shall pay the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 3RD DAY OF SEPTEMBER, 2009.

D. MUSINGA

JUDGE.

3/9/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Nyawencha for Mr. Kipyegon for the Objector

N/A for Petitioners

Court: Ruling delivered in open court on the 3rd day of September, 2009.

D. MUSINGA

JUDGE.