



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Miscellaneous Civil Application 121 of 2005**

**HASSAN HUSSEIN AJEB:.....APPLICANT**

**VERSUS**

**ABDUL KHADER SAID:.....RESPONDENT**

**RULING**

**HASSAN HUSSEIN AJEB** the Objector/Applicant brings this application under section 3A and 63 (e) of the civil procedure Act and section 47 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules. He prays for orders for the preservation of the deceased's estate until the objection filed herein is heard and determined. It is brought on the grounds that Grant was issued by a court without jurisdiction and the proceedings to obtain such Grant were defective in substance. That the Grant was obtained fraudulently by the concealment from the court of something material to the case and the beneficiaries of the estate of the deceased did not give their consent to the making of the Grant or the Confirmation of the same and the Respondent/Petitioner did not acknowledge the Applicant's interest in the property sought to be distributed. The other grounds are that the Petitioner is in the process of leasing and/or putting third parties into possession of the suit land and so the objector risks being deprived of his share and other beneficiaries risk being disinherited. That the suit land was purchased by the Objector in equal shares with his late father. The Objector/Applicant is a child of the deceased. The Objector/Applicant has sworn an affidavit in support of his application reiterating the above and adding that he has been in possession of the suit land known as Eldoret Municipality/Block 5/315/1 (previously known as LR. No.7789/148) since 1984 a fact the Petitioner did not disclose to court when obtaining Grant and confirmations thereto. He says that the current value of the property is three million five hundred thousands Kenya Shillings.

**ABDUL KADER ABDUL KALID SAID** swore a Replying Affidavit in opposition to the application. He is the Respondent herein. In it he swears that he is one of the registered proprietors of the suit land and denies ever attempting to in any way deal with the suit land to the disadvantage of the Applicant and states that it is indeed the Applicant who has leased the suit premises severally without the knowledge or consent of the Respondent. He adds, inter alia, that he is not opposed to the preservation of the suit property and that that should include not allowing the Applicant to put in possession any third party in the suit land.

At the hearing of the application at 10:40 a.m. Mr. Kidiavai who had earlier been in court during time allocation was now not present. Mr. Gicheru for the Applicant argued that preservative orders be issued until the objection was heard and determined.

I have given this application due consideration. Both parties herein are agreed on one thing, that the suit property must be preserved. The court agrees. In matters of this nature all proceedings must be above board. If it is true that the Respondent obtained Grants irregularly then that aspect must be addressed. Clearly if the suit land is valued as stated by the Applicant, which the Respondent has not denied, then the court at Kapsabet lacked jurisdiction and that must be addressed at the objection proceedings stage. For now and upon the material placed before court I find that the estate must be preserved. Accordingly I grant prayers C, D and E and as regards (E) order that the Respondent do deposit into this court the original certificate of lease over land parcel number Eldoret Municipality/Block 5/315/1 within thirty (30) days of this Ruling. I further order, as prayed in prayer f that the Applicant and

the Respondent do open a savings account at Savings and Loan Eldoret Branch in their joint names into which the Applicant will pay all the rent payable in respect of the suit property until the objection filed herein is heard and determined. The account will be opened within thirty (30) days of this Ruling. The costs of this application will be in the cause.

Orders accordingly.

**DATED AND DELIVERED AT ELDORT THIS 2<sup>ND</sup> DAY OF DECEMBER, 2009.**

**P.M.MWILU**

**JUDGE**

**IN THE PRESENCE OF:**

Mr.Songok holding brief for Mr. Kidiavai for Defendant/Respondent.

Mrs. Lagat holding brief for Gicheru for Plaintiff/Applicant