



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL MISC. APPL. NO.125 OF 2001

(From original Succession Cause No.44 of 2001 H/Bay P.M.'s Court.)

**IN THE MATTER OF THE ESTATE OF RUSALIA NDEGE TANDI
AND**

**IN THE MATTER OF AN APPLICATION BY ISMAIL OWINO TANDI,
JOHN OMBALO TANDI & LEONARD OCHIENG SALMON FOR THE
REVOCATION & ANNULMENT OF THE GRANT
BETWEEN**

1. ISMAIL OWINO TAMBI)

2. JOHN OMBALO TAMBI) OBJECTOR

3. LEONARD OCHIENG SALMON)

VERSUS

EZEKIEL MWAI DERA

RESPONDENT

RULING

The applicants brought this Notice of Motion seeking court to nullify letters of Administration granted to the Respondent on 7.11.01 in respect to the Estate of the late RUSALIA NDIEGE TANDI. They also seek court to declare that the said grant was obtained fraudulently by making false statements and concealment of material facts.

They also want court to declare that the respondent was wrongly registered as proprietor of land parcel No.Kanyamwa/Kakaeta Komungo/1149 and that the registration be cancelled and the land be registered in the name of Leonard Oketch Salmon.

The succession cause revolved around land No.Kanyamwa/Kakaeta Kamungo/1149 which was registered in the name of RUSALIA NDIEGE TANDI.

She died in 1995 – the actual date not stated. The Respondent Ezekiel Mwai Dera had in 1992 purchased 4½ acres of land from the said Rusalina and her son Solomon Aketch Tambi, Solomon later fell sick and died. His mother also died later. On 18/4/01 the Respondent filed an application citing Esther Ligawa who was Solomon's widow and Tobias Owino Solomon her son. He was thereafter allowed to file a succession cause though the two cites had entered appearance.

Thereafter Respondent was granted letters of Administration. After a few days he applied for confirmation which was granted on 28/11/01. The land was subsequently transferred and Registered in his name.

The applicant stated that they were grandson and stepsons of the late Rusalina.

The first two are stepsons and the 3rd one a grandson being the son of the late Solomon Aketch. They deponent that when the respondent cited Tobias Owino and Esther Ligawa they were never informed though they too were heirs of the late Rusalina.

They only came to know about the succession cause after the land had been transferred to the Respondent. The respondent when he obtained letters of Administration did not disclose that the late Rusalina had left behind stepsons and a grandson who are the applicant. He obtained the letters therefore without full disclosure. He did not cite the applicants, who live in that land. Further it was submitted that the letters of Administration were confirmed before the expiry of 6 months without any good reason being given.

In reply the respondent retaliated that he bought the land from Rusalina and Solomon. He paid money and a cow.

I have considered the application. I find that the Succession cause proceedings wanting. In the first place the proceedings do not show that Letters of Administration were granted on 7th November 2001 or at all. The file was before the Magistrate on 20th June 2001 and the next time parties appeared was on 20th July 2001. After that record show the Respondent appeared on 28th November 2001 when the grant was confirmed.

There is no record to show that he appeared on 7th November 2001 when the grant was issued.

The citees had entered appearance and filed replying affidavits denying the petitioners claim. It seems that they were never heard apart from the day they were ordered to file succession cause. Their affidavit were not considered.

Grant is said to have been issued on 7th Nov. 2001. It was confirmed on 28th November 2001 – 21 days later. The petitioner did not in his application say why he wanted it confirmed before six months were over as required by the law. It is only where there are good reasons that a court can confirm a grant before six months are over.

There was no reason given in the instant case.

The applicants are stepsons and grandson of Rusalina and depones that they live in that land. I concur with them that they too should have been cited. They had an interest in the Estate but the Respondent chose to cite only two people. They were not shown as dependants in the papers filed which means that he did not make a full disclosure.

From above therefore I am satisfied that the grant and confirmation of the same was not proper. The same are annulled together with the consequent transfer and registration of the Land No.Kanyamwa/Kakaeta/1149 in the Respondents name.

The registration be cancelled. Parties to commence succession proceedings and follow proper procedures and steps.

It is so ordered.

Dated 19th day of April 2005

KABURU BAUNI

JUDGE

cc: Mobisa

Applicant present

Respondent present