



IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 647 OF 2005

IN THE MATTER OF THE ESTATE OF THOMAS KINDILI MUSEMBI (DECEASED)

R M MAPPLICANT

VERSUS

F M M1ST RESPONDENT

J N M2ND RESPONDENT

T K3RD RESPONDENT

RULING

T K M died intestate on 20/9/2004. Grant of letters of administration were issued to F M M, J N M and T K . The grant was confirmed on 19/1/2007. In Form P & A5 and the Chief's letter, the three administrators and three others, namely, D M W , A K M and O M M were named as beneficiaries to the deceased's estate, the last two being minors by the time of confirmation.

On 17/1/2011, R M M filed summons for revocation or annulment of the grant based on grounds that the grant was obtained by making of false statements and concealment of material facts. In the supporting affidavit sworn on the same date, the applicant depones that the deceased, T K was her brother and that **Nakuru/Municipality Block 29/380** belonged to her late mother K K and that the same was originally known as **Kalenjin Enterprises Block 29/380**. She deponed that the said plot was adjudicated upon in Succession Cause No. 479 of 1999, estate of **Kavata Kindili**. A copy of the confirmed grant in HCC 479/99 was exhibit (RMM3). According to the applicant, the said property did not form part of the Thomas Kindili's estate. On discovering the anomaly, the applicant applied to the Land Disputes Tribunal which ordered that the land be returned to her (RMM4). The applicant also exhibited a share certificate from Kalenjin Enterprise which shows that Kavata Kindili, the applicant's mother, was a member (RMM5) and the respondents who are children of her deceased brother could not inherit from her mother. Despite the applicant being the rightful owner of the property, she has been denied its enjoyment by the respondents who have rented it out.

Oumo Advocate for the respondents was served with the summons on 14/2/2011 but did not appear at the hearing nor was any reply filed. The court having been satisfied that the respondents' counsel was dully served, heard the application ex parte.

On 30/4/05, the Rift Valley Enterprises Ltd addressed a letter indicating that **L.R. Nakuru Municipality Block 29/380/Ronda** was originally registered under K K, the applicant's mother and later registered in the name of T K M in Succession Cause No. 479/1999 which was granted on 15/2/2001. It is the

applicant's contention that **Nankuru Municipality Block 29/380 (Ronda)** is the same as the plot Kalenjin Enterprises and the confirmed grant in 479/1999 does confirm that the estate of KK K was the subject of adjudication where the whole of **Nakuru Municipality Block 29/380** devolved to the applicant herein another plot **Miti Mingi/Mbaruk Block 13/1076 BARUT** devolved to T K M and that is the property that the respondents can claim. It seems that the property which was the subject of distribution in this matter, **Kalenjin Enterprises 29/380**, is same as **Nakuru Municipality Block 29/380** which was wrongly included in the estate of T K M when it had already been the subject of distribution in HCC No. 479/1999. The grant in HCC 479/1999 having been issued on 15/2/2001, the confirmed grant issued herein later on 19/1/07 was issued based on misrepresentation and concealment of facts by the respondents herein. The grant confirmed to F M M , J N M and T K on 19/1/2007 was so confirmed in error and is hereby revoked. If the respondents believe they have any claim to the said suit land, then it is advisable that they move in HCC 479/1999. the respondents do render account of the proceeds of rent since they took over management of the said premises and lastly, the parties do have the matter mentioned with a view to the parties agreeing on how the applicant can take over possession of the disputed property. The respondents to bear the costs of this application.

DATED and DELIVERED this 8th day of April 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

Mr. Njuguna for the applicant.
Mr. Oumo for the respondents.
Kennedy – Court Clerk.