

IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION CAUSE NO.5 OF 1999

IN THE MATTER OF THE ESTATE OF PAUL MOSOTA ONCHIRI ...

DECEASED

AND

PRISCAH MORAA MOSOTA APPLICANT.

RULING

The applicant/objector RAPHEL ONYANCHA MOCHAMA prays to this court that Letters of Administration to PRISCAH MORAA MOSOTA the petitioner/ Respondent, made on 9th February 1999 and confirmed on 20th June 2000 be revoked and/or annulled. The petitioner/respondent is the widow of the late PAUL MOSOTA ONCHIRI who died on 20th September 1998; at the age of 55 years.

The petitioner filed this cause on 5th January 1999. He named the beneficiaries as herself, her two daughters and five sons. The usual procedures were followed and the cause gazetted in the Kenya Gazette of 22nd Jan 1999. On 9th February 1999 the petitioner was granted Letters of Administration to administer the Estate. The properties of the Estate were shown as four pieces of land, an account with K.C.B and shares with K.C.B together with death gratuity. The grant was confirmed on 20th June 2000 and the estate was distributed to the sons of the deceased. On 20th June 2003 the applicant brought this application.

The applicant deponed that he is a son of the late ALOYS MOCHAMA who was a brother to PAUL MOSOTA. Thus he is a nephew to the deceased in this cause. The mother of the two brothers was MORAA ONCHIRI who too is now deceased. MORAA was the registered owner of land No.NYARIBARI CHACHE/B/B/ BOBURIA/1215 and 1966.

He further deponed that the deceased PAUL, registered the whole land No.1215 in his names disregarding his brother who had died before him. It was submitted that the applicant's parents had built a home in parcel No.1215 and both of them and their late son are buried there. The applicant further stated that he has lived in that land all his life. The Respondent petitioner did not disclose this when she applied for the letters of Administration. This was therefore concealment of material fact and the grant was therefore obtained fraudulently he submitted. It was further said that the husband of the deceased held the land in trust of the applicants' father. The applicant therefore had an interest in the land which the respondent failed to disclose.

Respondent filed a replying affidavit and stated that the land in question was given to her husband by his mother in 1973. It was registered in his name absolutely. She further deponed that the applicant's father was in turn given land No.1966 which is registered in his name. Their mother even clarified this in a will she made before she died.

The applicant/objector filed a further affidavit and admitted that indeed his late father is the registered owner of land No.1966. He however said that he is so registered in trust to his late brother Paul. They were to share that land as well as land No.1215.

From the application affidavits and submissions it seems to me that the applicant is not really quarrelling the grant. What is in contention is ownership of land No.1215 which was one of the properties of the deceased. He has not laid claim over the other properties.

The petitioner is the widow of the deceased. She was the right person to apply for grant to administer the estate of her late husband. The objector is only a nephew and far removed in priority as the deceased

had sons and daughters.

The only thing to consider is whether the Petitioner obtained the said grant fraudulently without disclosing some material facts. Having considered the application I find that the petitioner did not obtain the grant fraudulently and there is no material fact she concealed.

She stated her relationship with the deceased and gave the names of the beneficiaries. She enumerated the assets of the Estate. She had no obligation to disclose that the deceased had a nephew called RAPHAELL ONYANCHA. The applicant has not shown that he had any beneficial interest that warranted his being included as a beneficiary. There is no dispute that land No.1215 was registered in the name of the petitioner's husband. This was during the lifetime of his mother who transferred it to him. There was nothing to show that the transfer was not done properly. Applicant did not show that there was fraud. Of course there was no fraud for if there was the same would apply to the registration of land No.1966 to his own father. His own father during his life time did not claim any part of the land from the deceased. It is belatedly for the son to claim that there was fraud several years later. In any case if he was basing his claim on fraud he should have filed a Civil Suit to canvas it on behalf of his father.

At some point in submission the applicant seemed to change track and bring an issue of trust. He said his father was registered as owner of No.1966 in trust for the petitioner's widow and vice versa. This submission was not supported by anything. As stated the two brothers were given the lands by their mother.

If she did not want each of them to own the lands absolutely she would have caused them to be registered jointly. By the time the transfers were done both sons were grown ups with families. She would even have the two lands subdivided and each portion registered in each brother.

She did not do this and the only conclusion one can make is that she transferred each land to each brother absolutely. None of the two brothers seemed to have any problem with that until they passed on. The applicant did not even say where he got the information that the deceased was registered in trust for his father. The mere fact that his parents are buried on the land is no good reason to support his claim

. All in all I find the application has absolutely no merit. The same is dismissed with costs.

KABURU BAUNI

JUDGE.

27/7/04.