



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO. 350 OF 2016**

**SHEM OKORE AGOLA suing as the Administrator of the Estate of**

**PIUS OYIEKO ABOLA, Deceased.....PLAINTIFF**

**VERSUS**

**PETER ARUM AKUMU.....1<sup>ST</sup> DEFENDANT**

**TOM MBOYA AYUGI.....2<sup>ND</sup> DEFENDANT**

**JARED NYAGUTI.....3<sup>RD</sup> DEFENDANT**

**MIEELY ENTERPRISES.....4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR, NYANDO.....5<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

Long time ago, there lived a man known as Pius Oyieko Agola (*hereinafter referred to as the deceased*) who died intestate domiciled in Kenya on the 5/7/1996. At the time of his death, he was the proprietor of land parcel number Kisumu/West Kogita/3023. Upon his death, letters of administration intestate were issued to Riper Arum Akumu the first defendant herein.

Shem Okore Agola, (*hereinafter referred to as the plaintiff*) filed an objection in the High Court Succession Cause no 103 of 2014 seeking revocation of the grant of letters of administration intestate issued to the 1<sup>st</sup> defendant on the grounds that the 1<sup>st</sup> defendant had obtained the letters of administration without considering the brothers of the deceased. The objection was dismissed with costs to the 1<sup>st</sup> Defendant.

The Plaintiff was not deterred and moved the court in the Senior Magistrates court of Nyando in case no. 183 of 2016 and obtained limited grant of letters of administration ad litem in the estate of Pius Oyieko Agola as the personal representative and filled this suit.

The Plaintiff claims that he is the legal administrator of the estate of Pius Agola Oyieko on the basis of letters of administration ad litem despite the fact that the 1<sup>st</sup> defendant has full grant. The plaintiff claims that the suit property was transferred without confirmation of grant.

The Plaintiff prays that land reverts back to the deceased despite the fact that the High Court in Succession Cause no. 103 of 2014 which was filed earlier than this suit held that the 1<sup>st</sup> defendant who claims as wife to the deceased's brother ranks in priority to the objector (the plaintiff) who was a step brother to the deceased. The Plaintiff ultimately prays for nullification of all transactions that have taken place from Pius Oyieko Agola to the 1<sup>st</sup> -4<sup>th</sup> Defendants.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file defence. The 3<sup>rd</sup> and 4<sup>th</sup> defendants filed defence stating that the transfers were done in accordance with the law and the relevant process was followed. The Defendants state that Plaintiff lacks capacity.

When the matter came up for hearing, the plaintiff stated that he had a limited grant of letters of administration intestate in the estate. He produced the green card, the certificate of official search. The land was registered in the name of the 4<sup>th</sup> Defendant.

On her part, DW1, Risper Arum Agutu, stated that the plaintiff is a brother in law. Pius Oyieko Agola was her second husband. She did succession and was awarded the land. She states that she obtained the land legally from the deceased through transmission. The plaintiff had no rights to the land.

On cross examination by the plaintiff's counsel, she states that she did not sell land. She does not remember the land reference number.

DW2, Tom Mboya Ayuku stated that the 1<sup>st</sup> Defendant is his sister in law. They had land transaction. He bought the piece of land from the 1<sup>st</sup> Defendant when it was registered in the names of Pius Oyieko Agola. DW3, claims to have brought the land from DW2.

I have considered the pleadings and the evidence in record and do find that the suit property was registered in the name of the 1<sup>st</sup> Defendant on the 27/7/2014 pursuant to Succession Cause no. 103 of 2014 at Kisumu High Court. At the time of registration, the 1<sup>st</sup> defendant was the legal representative of the estate of the deceased. The property was transferred to Tom Mboya Ayugi on 23/7/2015 and title deed issued.

The plaintiff further lodged a caution as a beneficiary but the caution was removed vide a court order. The property was transferred to Jared Nyaguti and title deed issued and finally to Mitely Enterprises Ltd.

The 1<sup>st</sup> issue this court seeks to determine is whether the plaintiff has the capacity to file the suit.

It is trite law that the estate of deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued grant of letters of administration intestate has capacity to represent the estate of a deceased person.

The powers of the personal representative are set out under Section 82 of the Law of Succession Act, Cap 160 of the Laws of Kenya which provides as follows:

**82. Personal representatives shall subject only to any limitation imposed by their grant, have the following powers:-**

**(a) to enforce, by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arising out of his death for his personal representative;**

**(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them as they think best:**

**(i) Any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and**

**(ii) No immovable property shall be sold before confirmation of the grant;**

**(c) To assent, at any time after confirmation of the grant to the vesting of a specific legacy in the legatee thereof;**

**(d) .....**

8. The granted letters of administration takes effect from the date when it is issued as provided under Section 80 (2) of the law of Succession Act which provides as follows:-

**80(2) A grant of letters of administration, with or without the will annexed shall take effect only as from the date of such grant.**

I do find that the plaintiff's letters of administration ad litem are a nullity as the 1<sup>st</sup> Defendant was issued with the grant of letters of administration intestate prior to the letters of administration ad litem being issued to the plaintiff. In fact, the letters of administration ad litem were issued by the lower court despite the fact that the High Court had already issued a grant letters of administration intestate.

On this point alone, I do find the suit by the plaintiff a non-starter. The Plaintiff has no capacity to commence the suit as done.

It would be academic exercise to attempt to determine whether the transactions were legally done as the plaintiff lacks capacity. Ultimately the suit is dismissed with costs to the defendants. Orders accordingly.

**DATED AND DELIVERED THIS 29<sup>th</sup> DAY OF January, 2020.**

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**In the presence of:**

Omondi T for the plaintiff.

Emukule for the 1<sup>st</sup> to 4<sup>th</sup> defendants.

**A. O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**