



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 65 OF 2012**

**IN THE MATTER OF THE ESTATE OF THE LATE LOITALIMA LALANGOLE**

**RAMATHAN LALANGOLE MAGAL.....PETITIONER/RESPONDENT**

**VERSES**

**HOSEA OKHUPO KULUNDU.....OBJECTOR/APPLICANT**

**JUDGEMENT**

1. The objector herein through the summons for revocation of grant dated 16<sup>th</sup> July 2015 seeks to have the of letters of administration issued and confirmed in favour of the Respondent herein revoked for the simple reason that the same were obtained unlawfully and with concealment of material facts.
2. The deceased herein died intestate and left behind no heir except the respondent who was his brother. The Respondent proceeded to take out letters of administration and had the same confirmed. Apparently the only asset left behind by the deceased was **LAND PARCEL NO. 273 KANYARKWAT SETTLEMENT SCHEME**.
3. The Respondents summons was directed by this court to be heard by way of viva voce evidence. Parties were then ordered to file their respective affidavits as well as statements. Their oral evidence can be summarised as hereunder.
4. **PW1 EMMANUEL HOSEA KULUNDU** testified on behalf of his father the objector herein. He stated that the objector was about 100 years and was therefore too old to test to testify and he went ahead and produced a medical document to that effect.
5. He stated that the deceased sold the suit land to the objector at a total purchase consideration of ksh.26000. He said that the documents were lost during land clashes. He however produced for identification an application to the land control board and the relevant consent.
6. He said that they have been in active occupation of the land save for the period when there were clashes. He nevertheless did not know where the deceased stayed and died after selling the land to his father.
7. As they attempted to process the title they discovered that the respondent had applied for succession proceedings hence the objection herein. He further produced the payment receipts from the settlement office to indicate how they have repaid the loan.
8. **PW2 FRANCIS OBIRIA OSEKO** the current county settlement and adjudication officer Trans nzoia produced the file in respect to the suit land. He said that the allotment letter was in the name of the deceased and that he was still paying SFT loan. He further stated that there was consent wherein the land was to be transferred to a third party.
9. After the close of the objectors' case the respondent called **DW1 COLLINS KIPRUTO** a Court Assistant who came and produced a Court File No. 67 of 2014 ELC at Kitale High Court. The parties therein are **LOPUSIKOU KORI LOKAMAR Verses RAMADHAN MAKAL LOLONGOLE**. The subject matter was the suit land herein where the plaintiff sought a declaration that he was the rightful owner of the land inter alia.
10. According to the witness the said suit was dismissed for want of prosecution. Although there is an application to set the orders aside the matter according to him is largely settled.
11. **DW2 RAMADHAN LOLONGOLE** the respondent testified that his late brother did not marry neither did he leave any heir behind. That he stayed with him till his demised and he buried him in his land. He was aware that the deceased was allotted the land by the government and that he did not sale the same to anybody leave alone the objector.
12. He said that he did not know the objector. He further said that he was sued at the land and environment court by one Losikou vide case

number 67 of 2012 but the same was dismissed for want of prosecution. The said claimant indicated that he had purchased the land from one Hosea Kulundu, the objector.

13. He stated that the deceased did not take anybody to the land control board. When cross-examined he said that he did not live in the land as his son was chased away by Losikou.

14. Having heard the parties the court ordered that written submission be made by the respective counsels and the court has had the advantage of perusing the same as well as the attached authorities.

15. The grounds of revoking the grant are clearly spelled out in Section 76 of the Succession Act namely;

- a. the proceedings were defective in substance,
- b. the grant was obtained fraudulently
- c. the grant was obtained as a result of untrue allegations
- d. the same has not been dealt with diligently

16. It is apparently clear that the deceased died intestate and the only person left behind and closer to him is the applicant. The objector claimed to be the purchaser of the suit land.

17. Can it be said that the objector purchased the suit land? There was nothing exhibited in form of sale agreement to that effect. The objector through his son claimed that the same was destroyed during clashes. There was no police abstract to show this. No independent witness was called to confirm that indeed that objector was involved in any clashes and that his properties were destroyed.

18. Secondly and more importantly the land control board consent produced did not have the accompanying minutes and the same was simply marked and not produced. If the same was genuine it should have had the relevant minutes giving the consent.

19. It has been suggested that the was overwriting using a pen and thus the same seems to be a forgery. Considering that the same was not produced I find the argument to be academic.

20. Without going far I do not find the objection meritorious at all pursuant to the provisions of section 76 of the Act stated above. I find that the objector is simply a trespasser in the estate and the same is confirmed by the matter dismissed by the Land Court stated above.

21. Clearly the records from the settlement office still showed the deceased to be the legitimate owner of the land. In short there was nothing for the petitioner to disclose as the objector did not have any right in the estate. If he paid someone else his money, then it was not the deceased.

22. The objection proceedings are hereby dismissed with costs to the respondent/ petitioner.

**Delivered, Signed and dated at Kitale this 13<sup>th</sup> day of May, 2019.**

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**H. K. CHEMITEI**

**JUDGE**

**13/5/19**

**In the presence of:**

**Mr. Onyancha for Okile for Objector**

**No appearance for the Petitioner**

**Court Assistant – Kirong**

**Judgment read in open court.**