



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 202 OF 2016

IN THE MATTER OF FRANCIS KAMAU ERASTUS MUNGAI

SAMUEL MBURU KAMAU..... APPLICANT

VERSUS

SUSAN NJERI KAMAU..... RESPONDENT

AND

DANIEL MACUA NDONGA..... 1ST INTERESTED PARTY

PERIS SUSAN WANGUI..... 2ND INTERESTED PARTY

SOUTH KNIGHT LIMITED.....3RD INTERESTED PARTY

STANDARD CHARTERED BANK OF KENYA.....4TH INTERESTED PARTY

I & M BANK.....5TH INTENDED INTERESTED PARTY

RULING

1. The deceased Francis Kamau Erastus Mungai died intestate on 1st December 2015 at Nakuru. He hailed from Kiambu. Up to 25th July 2014 he was the registered proprietor of land parcel Nakuru/Municipality B4C3/427. On this date the property became registered in the name of South Knight Limited (3rd interested party). On 2nd July 2014 a charge was registered on the title in favour of I & M Bank Limited (5th intended interested party) to secure a loan of Kshs.15,000,000/=.
2. On 4th February 2016 the applicant Samuel Mburu Kamau and one Evans Mungai (both sons of the deceased) petitioned this court for the grant of letters of administration intestate.
3. There is in the Environment and Land Court at Nakuru a case **ELC No. 98 of 2017** in which the respondent Susan Njeri Kamau (one of the widows of the deceased) has sued I & M Bank (5th intended interested party), the 3rd interested party, Daniel Macua Ndonga (1st interested party) and Benjamin Kisoi

Sila t/a Legacy Auctioneers over this same property. The 3rd interested party had allegedly failed to repay the loan that had been disbursed to it by the 5th intended interested party, and that had led to the bank's exercise of its statutory power of sale. This had been done through the auctioneers. The respondent's case was that this was her land which she was selling to the 1st interested party and his wife who were directors of the 3rd interested party. The agreed price was Kshs.30,000,000/= but she was paid only Kshs.5,000,000/=. Somehow, before payment of the full purchase price, the suit property had been fraudulently transferred to the 3rd interested party who had used it to obtain the loan of Kshs.15,000,000/= which was never serviced.

4. In the instant cause, the applicant stated that the property belonged to the deceased but that it was fraudulently transferred to the 3rd interested party, at the time when the deceased was incapacitated owing to ill health.

5. Whatever the case, by the time the deceased died this was not properly registered in his name. This was not his free property in terms of **section 3 of the Law of Succession Act (Cap 160)**. It follows that when this succession proceedings were filed (in which it was alleged that this was the deceased's property) the property did not belong to the estate of the deceased.

6. The applicant claims that this was the deceased's property that was fraudulently and illegally transferred to the 3rd interested party who took a loan on it which they did not service thereby leading to there being its sale. That is a dispute that (once he has letters of administration intestate) he can pursue before the Environment and Land Court. The Court that would deal with the matter would be the Environment and Land Court at Nakuru. Indeed, there are proceedings in that court that the respondent is already involved in. The applicant can seek to join the proceedings, if he is not a party therein.

7. Unless this cause has other property that belonged to the deceased, I find that it is incompetent. The cause herein is transferred to the Environment and Land Court in Nakuru (**ELC 98 of 2018**) for hearing and disposal.

8. The applicant's application is dismissed with costs and the motion of the 5th intended interested party to transfer the cause is allowed with costs.

DATED and DELIVERED at NAIROBI this 5TH day of MARCH 2018.

A.O. MUCHELULE

JUDGE