



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 132 OF 2010

IN THE MATTER OF THE ESTATE OF NYAMARERE ABUGA (DECEASED)

FRANCIS RATEMO NYAMARER.....1ST PETITIONER/RESPONDENT

NYAMBISA NYAMARERE.....2ND PETITIONER/RESPONDENT

VERSUS

HUDSON NYAUNDI MORWANI.....OBJECTOR/APPLICANT

RULING

1. The 1st and 2nd respondents were issued with grant of letters of administration and through an application dated 28/04/2010 applied to have the grant of letters of administration confirmed. The certificate of confirmation of grant was issued on 20/05/2011.
2. The objector/applicant filed an application dated 13/07/2016 seeking to have the respondent's grant of letters of administration made 13/10/2010 and confirmed on 20/05/2011 revoked. The applicant's application is based on the following grounds:
 1. *That the petitioner petitioned to this Honourable Court for letters of administration in respect of property that did not form part of the deceased estate.*
 2. *The petitioners obtained a grant on a nonexistent plot no. captured as 5A Suneka Market.*
 3. *The petitioners concealed material facts from the court that at the time of filing the petition and also at the time of filing the petition and the time of confirmation of grant there was no such plot existing in the name of the deceased.*
 4. *The Petitioners concealed material facts from the court that they has sold and transferred plot no. 5A at Nyambunwa market to one MARTIN MACHUKI and OROO NYAGUKU and that such change of ownership has moved to two people in 1992.*
 5. *The property whose ownership has changed hands cannot be subject to a succession cause in respect of the former owner.*
 6. *The petitioners acted fraudulently in filing this petition.*
3. The Application was supported by an affidavit of Hudson Nyaundi Morwani. The Application was further supported by the affidavit of Joyce Kerubo the widow to Ooro Nyaguka. She stated that her husband and Martin Machuki (deceased) leased Plot No. 5 A Nyambunwa Market from the petitioners. However on 01/03/1984 Martin Machuki paid Kshs 28,000/- to the petitioners as consideration of sale of the property and the petitioners on 15/10/1992 caused the property to be transferred to Martin Machuki and Ooro Nyaguku. That on 09/02/2009 the property was transferred to the objector/applicant.
4. The 1st Petitioner filed his undated replying affidavit on 10/08/2016 and states that sometime in 1954, the deceased borrowed some money Kshs 1,050 from Manoah Ondieki, Omache Mweruti and Obare Ounga and the deceased died before paying the amount to his creditors. That in 1968 the property was subdivided into Plot Number 5 A in favor of the deceased and Plot No. 5B in favor of Manoah Ondieki, Omache Mweruti and Obare Ounga. On 22/07/2007 the Petitioner reported the loss of the deceased plot card at Kisii Police Station and in 2009 they were informed by the County Council that the Plot No. 5 A Nyambunwa Market was registered in the name of Martin Machuki and Ooro Nyaguku. The 2nd Petitioner also put in his replying affidavit dated 9th August 2016. The 1st Petitioner through a further replying affidavit dated 05/10/2016 stated that the property referred to by the objector is plot number 5 B as indicated in the agreement for sale produced by the objector. He further stated that there exists a rectified grant following the objector's application dated 29/08/2016.
5. The parties agreed to have the matter proceed by way of written submissions.

