

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 384 OF 2013

IN THE MATTER OF THE ESTATE OF IBRAHIM KIBIYEGO LIMO (DECEASED)

BETWEEN

NAIMA CHEBOR.....APPLICANT

AND

FATUMA IBRAHIM LIMO.....RESPONDENT

JUDGMENT

1. The deceased Ibrahim Kibiyego Limo died intestate in Mombasa on 16th March 2000. He was survived by one widow, Fatuma Ibrahim Limo (respondent) and five children. The respondent petitioned this court for the grant of letters of administration intestate and indicated the property of the estate to be L.R No. Pumwani 36/VIII/581 Block No.B33/3/A. The grant was issued to her on 24th June 2013 and confirmed on 28th July 2014.

2. The applicant is a sister of the deceased. She filed summons dated 23rd July 2015 seeking the revocation of the grant issued to the respondent. She also asked that all subsequent actions taken pursuant to the confirmed grant with regard to the suit property be annulled; and that the respondent be condemned to pay the costs of the summons. Her application was premised on grounds that the proceedings leading to the grant and the confirmation were defective in substance; the respondent obtained the certificate of confirmation by means of untrue allegations of facts and misrepresentation and concealment of material facts to the court and the confirmation of the grant was full of errors so grave that it rendered the confirmation void in the circumstances.

3. The applicant swore an affidavit in support of her summons. It was her case that the property which the respondent listed as her matrimonial home in her petition was in fact property that belonged to her late mother Fatuma Ali Cheptum (also known as Fatuma Binti Ali) who died intestate on 4th February 1991. She stated that the said property was allocated to her late mother by the City Council of Nairobi (as it was then known) on or about 6th January 1970. Her late mother took possession of the property after payment of the requisite fees and the family lived on the ground floor of the property from the year 1970 to date, while renting out the other two flats. She continued that the respondent moved into the suit property sometime in 1991 after the death of Fatuma Ali Cheptum while the deceased lived and worked in Mombasa. The respondent stayed in the suit property until April 2015 when she moved out. It was her case that she was appointed as personal representative of the estate of her mother by the Kadhi's court on 16th March 2015, and that her family lived peacefully in the suit property until sometime in April 2015 when they were asked by persons who had allegedly purchased the suit property from the respondent to vacate therefrom. She stated that the respondent obtained an injunction and eviction order and the eviction carried out on 3rd June 2015. She averred that the respondent was using the grant obtained fraudulently to disinherit her from her mother's estate and asked that the grant be revoked.

4. The respondent did not respond to the summons despite being served. The applicant testified in court in support of her summons. She told the court that the respondent had lied in her petition when she claimed that the suit property belonged to the deceased while in fact it belonged to the applicant's late mother as was confirmed by the City Council of Nairobi. She testified that she currently stayed in the house and asked that the grant issued to the respondent be revoked.

5. I have looked at the tenant purchase agreement dated 6th January 1970 entered into between the City Council of Nairobi and the late Fatuma Binti Amina and one Margaret Binti Annah Tabori for the lease of flats in Pumwani Block B 3/3 (a & b). I also note that a letter dated 12th March 2007 addressed to Fatuma and Margaret by the City Council of Nairobi notified them that the property had been fully paid for and the process for issuance of lease documents had commenced. There is no evidence that the property belonged to the deceased at any time. It did not, therefore, form part of the estate for the deceased. It belonged to the applicant's mother. It was therefore false, misleading and fraudulent for the respondent to petition the court for grant on the basis that this property belonged to the deceased. The respondent also concealed that the applicant had gone to the Kadhi court and had been made the personal representative of her late mother over the property. Under **section 76 of the Law of Succession Act (Cap 160)**, I revoke the grant and certificate of confirmation, and annul any transactions between the respondent over the property. I ask that a fresh grant be issued to the applicant. She will be at liberty to seek its confirmation after 30 days, with service to the respondent. Costs shall be borne by the respondent.

DATED and SIGNED at NAIROBI this 30TH day of JUNE 2016.

A.O. MUCHELULE

JUDGE

DELIVERED AND SIGNED this 4TH day of JULY 2016.

W. MUSYOKA

JUDGE