



No. 400/14

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 307 OF 2003

IN THE MATTER OF THE ESTATE OF TABITHA MUTAVE KILONZO

VERSUS

TABITHA NDUNGWA KILONZO.....1ST PETITIONER

WILFAR MUSYOKA KILONZO2ND PETITIONER

RULING

1. The application dated **7th October, 2013**, is brought pursuant to the provisions of **Section 47** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate Administration Rules** and all enabling provisions of the Law.
2. The applicant seeks Orders that:-
 - i. The respondents/administrators be restrained from entering upon, cultivating, trespassing, alienating or in any other manner interfering with **Land Parcel Numbers Kalama/Iiuni/1058** and **Kalama Iiuni/548** pending hearing and determination of summons for revocation filed herein.
 - ii. An order be issued restraining the Respondents/ Administrators from interfering in any manner whatsoever with the applicant's entry upon the aforesaid land, the use, quiet enjoyment thereof and possession pending hearing and determination of summons for revocation.
3. The application is based on grounds that the applicant purchased the land from the deceased. Thereafter he developed the land and has resided thereon for more than twenty five (25) years. The deceased died without transferring the land to him. The respondent applied for letters of administration and omitted him as a beneficiary of the estate. The grant was confirmed on **13th May 2003**. On **20th October 2011** and **14th November, 2011**, the respondent executed an agreement to transfer the land to him. Title deeds in that regard were issued in the name of the 1st respondent who was to transfer the land to the applicant. This was not done. Instead the respondents have threatened to evict him. Unless restrained the applicant stands to lose his home.
4. In an affidavit in support of the application the applicant reiterates what is stipulated in the grounds of the body of the application.
5. In a reply thereto, the 1st respondent stated that the deceased never sold land to the applicant. She dismissed sale agreements adduced by the applicant as forgeries. She denied the averment that the applicant has a permanent structure on the land. Further, she denied that the applicant has resided on the land for twenty (25) years. Denying having agreed to transfer the land, she stated that the annexed agreement in that respect was procured by means of threats and coercion.
6. In a supplementary affidavit the applicant reiterated that the grant was obtained fraudulently as the

- respondents failed to disclose his interest in the estate of the deceased. He has a house on the land and has cultivated the land. The respondents have interfered with the property and have even uprooted the boundary made of sisal. A complaint was lodged to the police which he however withdrew. The Chief presided over the complaint. He denied an allegation that the agreements were forgeries.
7. By way of affidavit evidence the applicant has demonstrated that the applicant purchased two (2) parcels of land from the deceased namely; **Kalama/Iiuna 551** and **Kalama/Iiuni/548** in the years **1981** and 1986 respectively. The deceased passed on without transferring the land to him. It has been argued that he is not in occupation of the land but he has annexed evidence of a dwelling house, ploughed land and sisal plants that have been uprooted.
 8. It is not in doubt that when the respondents took out letters of administration of the estate of the deceased there was no indication of any outstanding liabilities to the estate. The applicant was therefore omitted as a beneficiary of the estate of the deceased.
 9. Parties herein entered into an agreement to have the land in issue transferred to the applicants, an agreement they alleged was made under duress. It is however; evident that since the year **2011** when the agreement was signed no complaint was raised to have it revoked.
 10. The chief presided over the boundary dispute between parties herein who agreed to maintain their respective boundaries. The applicant has therefore demonstrated the need to have the respondents restrained from interfering with his possession of the land that he occupies pending hearing of the application for revocation of the grant issued herein.
 11. I therefore grant the orders sought on condition that the application dated **17th September, 2013** be fixed for hearing within **21 days**.
 12. It is ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 9TH day of OCTOBER, 2014.

L.N. MUTENDE

JUDGE