



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCC. CAUSE NO.90 OF 1994

IN THE MATTER OF THE ESTATE OF SILMAN NYAMARI-DECEASED

DICK NYAGAKA.....1ST APPLICANT

EVANS MOSES NYAMARI.....2ND APPLICANT

BIRIA KERUBO NYAGAKA.....3RD APPLICANT

RUTH KERUBO NYAGAKA.....4TH APPLICANT

AND

NICHOLAS NYAGAKA OYIEKO.....RESPONDENT

RULING

1. The application for consideration in this Ruling is the one dated the 9/3/2021. The applicant seeks the following orders:

(1) This honourable court do grant leave to the County Land Registrar to dispense with the production of the original copy of the title deed for land parcel L.R. No Central Kitutu/Mwamosioma/348 to facilitate full implementation of its order of 7th March, 2018 by the County Land Registrar.

(2) Costs of this application be in the cause.

2. The application was opposed by Nicholas Nyagaka Oyieka the Respondent.

3. A brief background is necessary in the matter. The Respondent petitioned for a letter of administration intestate on the 22/3/94. A grant was issued to Nicholas on the 17/11/94.

4. An application to revoke grant was filed by Samuel Nyagaka Oyieko on the 30/10/98. On the 13/6/2001 the matter was referred for arbitration by the District Officer of Mosoch Division. The District Officer and 4 elders were to hear the dispute and to file the award within 60 days.

5. The award was confirmed in court on the 10/6/2002.

6. From the award judgment was entered that the land in dispute be shared amongst Silman's nephews Samuel Mariko, Bendicto and Nicholas just as their father Benjamin Oyieko had temporarily sub-divided it to them. Nicholas Nyagaka (Respondent) be given special consideration for taking personal care of his late uncle Mr. Silmani Nyamari before he died. Vincent Oyieko, Nicholas Nyagaka's son who marked Silmani's grave should also be considered in the sharing out of the land. This will compensate him for the reward he was not given when he performed the special burial rite to honour his late grandfather Silman.

7. A consent was recorded by the parties on the 1/7/2003 that the land be subdivided according to the existing boundaries.

8. On the 8/12/2014 the applicant's objection dated 8/10/2014 was dismissed for want of prosecution. On the 17/10/2016 an application was made by to have the Deputy Registrar to sign the transfer forms. This order was granted on the 7/3/2018.

9. The applicants in the application dated 25/9/2020 now seeks to have the County Land Registrar to dispense with the production of the original copy of the title deed for land parcel L.R. No. Central Kitutu/Mwamosioma/348 to facilitate full implementation of the order dated

7/3/2018 by county land Registrar. This order relates to a title over a property that is the subject of this succession case. It is the Environment and Land Court (ELC) which is clothed with the jurisdiction under Article 162(2) (b) to determine issues on title or to order the dispensation of an existing title to issue another title. This court lacks jurisdiction to grant the orders sought. I decline to grant the orders sought. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 28TH DAY OF JULY 2021.

R.E. OUGO

JUDGE

In the presence of:

Miss Kebungo For the Appellant

Respondent Absent

Mr. Orwasa Court Assistant