



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 109 OF 1987

IN THE MATTER OF THE ESTATE OF JOHN MAGANGA OKWARO (DECEASED)

BETWEEN

DORCAS OKWARO.....APPLICANT

AND

JOHNSTONE OMBIMA OKWARO.....1ST RESPONDENT

MARY ASIKO OKWARO.....2ND RESPONDENT

JULIAH SHIHORE.....3RD RESPONDENT

RULING

1. By summons dated 20th March, 2019 and filed on even date, the Applicant prays for orders that:

1) The 3rd Respondent be compelled to surrender the certificate of lease for land parcel KISUMU MUNICIPALITY/ BLOCK 7/34 to Kisumu Lands office for cancellation in default the Land Registrar, Kisumu County be ordered to cancel the same and reverted property back to the deceased herein John Maganga Okwaro

2) The 2nd and 3rd Respondents be compelled within a specified time frame to execute the transmission/ transfer documents in fulfilment of the Certificate of Confirmation of Grant dated 21st December, 2017 and in default the Deputy Registrar of this court be authorized to execute the transmission/ transfer documents on behalf of the 2nd and 3rd Respondents

3) Costs of this application be provided for

2. The application is based on the grounds among others that:

a) Only the Applicant has executed transmission/transfer documents in fulfilment of the Certificate of Confirmation of Grant dated 21st December, 2017 but the 2nd and 3rd Respondents have refused to do so

b) That the 3rd Respondent is unlawfully holding title to KISUMU MUNICIPALITY/ BLOCK 7/34

3. The application is supported by an affidavit sworn by the Applicant on 20th March, 2019 in which she reiterates the grounds on the face of the application. Annexed to the affidavit is the Certificate of Confirmation of Grant dated 21st December, 2017; letter dated 07.03.19 to Respondents' counsel Otieno, Yogo, Ojuro & Company Advocates forwarding transmission/transfer documents for the Respondents' signature and a reminder of the said letter dated 15th March, 2019 marked **DO1** and **DO2** respectively.

4. The application is opposed by way of a replying affidavit sworn by the 3rd Respondent on 22nd July, 2019. She avers that her name appears on title to **KISUMU MUNICIPALITY/ BLOCK 7/34** as a beneficiary of Henry Oyungu Okwaro (deceased), who is deceased's son. The 3rd Respondent urged the court to reject the application for the reason that an application dated 31st July, 2018 for stay of the judgment in this cause was on 16th July, 2019 certified urgent by the Court of Appeal.

Analysis and Determination

5. I have considered the summons in the light of the Certificate of Confirmation of Grant dated 21st December, 2017, the affidavits and grounds of opposition on record and the submissions filed on behalf of the Applicant and the 3rd Respondent.

6. The Certificate of Confirmation of Grant in the Estate of John Maganga Okwaro (Deceased) issued on 21st December, 2017 demonstrates without a doubt that **KISUMU MUNICIPALITY/ BLOCK 7/34** was to be distributed as follows:

- ½ to the estate of **JACKTONE NYAWIRI**

- ½ to **ELIJAH OBIERO OKWARO, MELSA AMBUKA OKWARO and WILFRED ANGÁNA OKWARO** in equal shares.

7. There is no doubt that the 3rd Respondent wife of Henry Oyungu Okwaro was not certified as a beneficiary of **KISUMU MUNICIPALITY/ BLOCK 7/34** and the transmission of that asset to her is therefore not supported by the Certificate of Confirmation of Grant in the Estate of John Maganga Okwaro (Deceased) issued on 21st December, 2017.

8. The 1st and 2nd Respondents who are joint Administrators with the Applicant have neither offered any explanation for their failure to execute the transmission/transfer documents in fulfilment of the Certificate of Confirmation of Grant dated 21st December, 2017 nor has the 3rd Respondent explained to the satisfaction of the court or at all, how **KISUMU MUNICIPALITY/ BLOCK 7/34** was transmitted to her whereas the Certificate of Confirmation of Grant shows that she was not certified as a beneficiary of that asset.

9. Whereas there is evidence that the 1st Respondent's application for stay of this court's orders made on 20th December, 2017 was on 16th July, 2019 certified urgent by the Court of Appeal, the court did not grant an order of stay and there is therefore no cause for not granting the orders sought.

Disposition

10. From the foregoing analysis, I have come to the conclusion that the notice of motion dated 20th March, 2019 has merit and it is allowed in the following terms:

1) The 3rd Respondent be and is hereby compelled to within 30 days from the date hereof surrender the certificate of lease for land parcel KISUMU MUNICIPALITY/ BLOCK 7/34 to Kisumu Lands office for cancellation and in default, the Land Registrar, Kisumu County is hereby ordered to cancel the same and revert the title to the name of the deceased herein John Maganga Okwaro

2) The 2nd and 3rd Respondents be and are hereby compelled within 30 days from the date hereof to execute the transmission/transfer documents in fulfilment of the Certificate of Confirmation of Grant dated 21st December, 2017 and in default the Deputy Registrar of this court is hereby authorized to execute the transmission/ transfer documents on behalf of the 2nd and 3rd Respondents

3) Costs of this application shall be borne by the Respondents.

DELIVERED AND SIGNED AT KISUMU THIS 31ST DAY OF OCTOBER 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For the Applicant - Mr. Odeny

For the 1st Respondent - N/A

For the 2nd and 3rd Respondents - Mr. Siganga hb for Mr. Mwamu