



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION 428 OF 2000

HARON NEWTON OMWANDA

GAMALIEL SHIRABIRE PETITIONERS

VERSUS

MORRIS MAKUNDA SHIKANDA OBJECTOR

DANIEL ASHTON OMWAYA..... APPLICANT

RULING

1. The applicant herein, Daniel Ashton Omwaya, has filed an application dated 19th February 2012 seeking for orders that:-

1) Spent

2) That the applicant Daniel Ashton Omwaya be enjoined in this suit as an interested party.

3) That the status quo be maintained by the parties pending the hearing and determination of this succession cause.

4) That Givan Eshiwani, Nelly Annah Panyako, simon Mbaye, Baraza Atiti & Benedict Ambundo be permanently restrained from uprooting sugarcane and other crops, cutting down trees, farming, constructing or in any manner utilizing any part of LR. Butsootso Shibeye 1120 pending the hearing and determination of this application interpartes.

5) That Givan Eshiwani, Nelly Annah Panyako, simon Mbaye, Baraza Atiti & Benedict Ambundo be permanently restrained from uprooting sugarcane and other crops, cutting down trees, farming, constructing or in any manner utilizing any part of LR. Butsootso Shibeye 1120 pending the hearing and pending determination of this suit.

6) That costs of this application be in the cause.

2. The application is based on the grounds that:-

a) That the applicant is a beneficial owner of land parcel No. Butsootso/Shibeye 1120 which is occupied by three beneficiaries namely:-

i) Harun Newton Omwanda (now deceased) 13 acres

- ii) Gamaliel Shirabire – 11 acres
- iii) Maurice Makunda – 8 acres
- iv) Taphas Oonda – 3 acres
- v) Esokone Secondary School – 2 acres

b) That the applicant is the biological son of the late Harun Newton Omwanda who died on 17.05.2014.

c) That the applicant is the next of kin to his estate in his capacity as his survived son.

d) That the applicant has planted sugar-cane within land parcel No. Butso/Shebeye 1120.

e) That it is within his knowledge that third parties have invaded the said sugarcane and are maliciously uprooting the same.

f) That it will be in the interest of justice that status quo be maintained by the parties so that his sugar-cane investment is not prejudiced.

g) That it will be in the interest of justice that the prayers herein be granted.

3. The application was opposed by the objector in the case Morris Makunda Shikanda on the grounds that:-

1) The application is an abuse of the court process

2) The applicant has not applied to substitute his deceased father Harun Newton Omwanda who was one of the petitioners in which the succession cause related and he thereby has no locus standi to file the application.

3) That on 23rd March 2016 the court made orders revoking the earlier grant and no distribution of the estate has been done.

4. Apart from the above said objector some other people, Abel Baraza Atiti, Simon Mbayeh and others contained in a notice of appointment of advocates filed by Onsando & Co. Advocates on 28th April 2017, came forward to oppose the application. However, they did not first seek leave of the court to be enjoined in the matter. The people are thereby strangers in the matter and are thereby expunged from the record.

5. Back to the application of the applicant Daniel Ashton Omwanda. The applicant says that he is the son of Harun Newton Omwanda who was one of the petitioners in this case but now deceased. The applicant has not made an application to substitute his father in the matter. He is now praying for injunctive orders against some third *parties* from using Land Parcel No. Bustotso/Shebeye/1120 which land belongs to the deceased in this succession cause. The applicant does not have a grant of letters of administration in regard to the estate of the said deceased. He therefore has no capacity of stopping anybody from utilizing the land. The application dated 19th January 2017 has no merits and is thereby dismissed with costs to Morris Makunda Shikanda (the objector).

Delivered dated and signed at Kakamega this 24th day of May, 2017.

J. NJAGI

JUDGE

In the presence of:

Morris Makunda – objector

Cc Paul