



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 27 OF 1997

**IN THE MATTER OF THE ESTATE OF PETER NAMISI
SIFUMA-DECEASED**

AND

JERRY WAKOLI }

ROBERT J. J. WECHULI }APPLICANTS

VERSUS

RICHARD NAMISI }

DINAH N. SIFUNA }RESPONDENTS

R U L I N G

1. The application dated 25/2/ 2014 principally seeks orders that the County Commissioner, Trans Nzoia County do provide security to the licensed surveyors (and his support staff) appointed by the applicants to carry out survey of L.R. 1826/1 with a view to comply with the certificate of confirmation of Grant dated and issued by this Honourable Court on 27th day of November 1998.
2. The application is supported by grounds stated in the body of the same and the affidavit of **RICHARD WANYONYI NAMISI**. According to the affidavit in support, the applicants are desirous of completing the administration of the estate and have obtained the consent of the land control board to sub divide LR 1826/1 into 52 portions as reflected in the certificate of confirmation of Grant. The applicants contention is that the attempts to survey the land have been resisted violently by some of the beneficiaries.
3. The application is opposed. It is stated in the replying affidavit that the application is fatally incompetent for lack of compliance with the mandatory provisions of the Law of Succession Act. That the order sought cannot legally be obtained from a succession court which has already distributed the land comprising the estate of the deceased.

That the beneficiaries who have resisted the survey exercise have not been disclosed. According to the respondents, the application is a back door attempt to circumvent this court's ruling dated 3/3/2011 which held that prior to his death, the deceased, **PETER N. SIFUNA** had divided land parcel No LR 1826/1 measuring 349 acres into two portions of 160 and 189 acres and further divided the 189 into 44 portions.

That the Land Registrar Kitale is already processing the titles for the 44 portions and the applicants should concern themselves with 160 acres that remained after the 189 acres were

excised from the 349 acres . It is further stated that the survey fees, conveyance fees, stamp duty and registration fees have been paid but it took the applicants over two (2) years before surrendering the Head Title. The respondents are objected to being subjected to a second round of an expensive survey exercise.

4. The application was canvassed by way of written submissions which I have duly considered.
5. The respondents have raised the issue of this court's jurisdiction to grant the orders sought. It is argued that once the succession court confirmed the grant and shared out the estate, the court's mandate ended and only a land court can grant the orders sought. The orders sought are that the County Government, Trans Nzoia County do provide security to the licenced surveyors to survey the suit land with a view to complying with the certificate of the confirmation issued by this court. The orders sought thus seek to implement the orders of the court. I hold that the application falls within the mandate of this court and falls squarely within the ambit of the inherent powers of the court under the provisions of rule 73 of the Probate and Administration Rules.
6. On whether the application is defective, it is contended that the Law of Succession Act does not provide for a chamber summons application. This is a defect in form and does not go into the substance of the application. No prejudice has been shown to have been suffered by the respondents. Article 159 (1) (d) of the constitution enjoins the court to administer justice without undue regard to technicalities of procedure.
7. Although the affidavit evidence does not reveal the beneficiaries who have violently resisted the survey exercise, the orders sought herein are directed towards giving effect to the certificate of confirmation of the grant.

I would say the same in respect of the application filed on 8/3/2002 which sought orders that the administrators of the estate of the deceased do surrender the Head Title to the Land Registrar Kitale for onward transmission to the commissioner of Lands to facilitate the issuance of individual Title Deeds.

The application was determined vide the ruling herein dated 3/3/2011 by Hon. M.K. Koome , J (as she then was).

In the said ruling, the application was allowed and the administrators given sixty (60) days to surrender the land title as prayed. In default the Commissioner of Lands was ordered to issue the individual titles, the surrender of the Head Title notwithstanding.

8. It is the Respondents uncontroverted evidence that the Head title was not surrendered until well over two years from the date ordered by the court. However it is not clear how far the processing of the title exercise has gone so far. Be as it may, if all that was remaining was the surrender of the title deed and the same has been surrendered, then there is no reason why any of the parties would have any reason to worry. The certificate of confirmation of grant has never been amended or altered in any way. The same does not talk of 249 acres in two portions of 160 and 189 acres or any further subdivision into 44 portions. Any Survey exercise carried out must therefore comply with certificate of confirmation of grant herein. I see no prejudice to be suffered by any party if the orders herein are granted. The application is allowed. The applicant to bear the costs of the application, and the costs of the surveyors and any other incidental costs.

The orders herein do not bar the respondents from hiring their own surveyors at their own costs during the exercise.

B. THURANIRA JADEN

JUDGE

Delivered and dated this 21st day of march 2016.

B. THURANIRA JADEN

JUDGE