



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**ENVIRONMENT AND LAND COURT CASE NO. 495 OF 2014**

**HENRY MACHINI ..... PLAINTIFF**

**VERSUS**

**SIMON ARASA ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff/applicant pursuant to a certificate of confirmation of grant issued on 10<sup>th</sup> February 2012 in **Kisii Succession Cause No. 158 of 2004** was granted as beneficiary/heir of one Mogire Nyakwara (deceased) a portion of 0.05Ha out of land parcel **LR No. Central Kitutu/Mwabundusi/336** owned by the deceased. The defendant/respondent was issued the grant of letters of administration to the deceased estate and was thus expected to distribute the deceased estate in terms of the confirmed grant. The plaintiff/applicant states the defendant/respondent has refused, failed and/or neglected to execute his duties as such administrator of the deceased estate.
2. The plaintiff/applicant by the instant suit by way of originating summons dated 24<sup>th</sup> December 2014 prays for orders that:-
  1. **The defendant be directed to sign all documents to effectuate transfer of a portion measuring 0.05Ha out of LR No. Central Kitutu/Mwabundusi/336 failing which the executive officer of the court be empowered to sign the said transfer documents on his behalf.**
  2. **That there be an order restraining the defendant either by himself, agents, servants and/or employees from in any way interfering with the plaintiff's piece of land measuring 0.05Ha of LR No. Central Kitutu/Mwabundusi/336 in any way whatsoever and/or howsoever pending the hearing and determination of the suit.**
  3. **Costs of the originating summons be borne by the defendant.**

The originating summons is premised on the grounds that appear on the face of the application and on the affidavit of Henry Machini the plaintiff/applicant herein sworn in support of the summons dated 24<sup>th</sup> December 2014.

3. The defendant was served with the originating summons on the same day it was filed as per the affidavit of service made by one Isaac Nyangena Kemari a process server filed on 13<sup>th</sup> March 2015. The defendant did not enter appearance and/or filed any response to the originating summons. The plaintiff/applicant filed an application for directions on the originating summons on 21<sup>st</sup> August 2015 which application was fixed for hearing on 16<sup>th</sup> November 2015. The application for directions was served on the defendant on 7<sup>th</sup> October, 2015 as per the affidavit of service made by one Isaac Miruka, a process server filed in court on 16<sup>th</sup> November 2015.

4. On 16<sup>th</sup> November 2015 the application was listed for directions before me when only the plaintiff/applicant appeared. I gave directions that the originating summons do proceed to be heard by way of affidavit evidence and written submissions. The plaintiff filed his written submissions dated 16<sup>th</sup> December 2015 on 22<sup>nd</sup> December 2015 which basically reiterates the contents of the affidavit filed in support of the originating summons.
5. I have reviewed and considered the affidavit sworn in support of the originating summons and the submissions by the plaintiff's counsel and I make the following findings of fact:-

1. **That Simon Arasa, the defendant herein was issued grant of letters of administration to the estate of Mogire Nyakwana deceased on 13<sup>th</sup> September 2004 as per annexure marked "HM001".**
2. **That on 10<sup>th</sup> February 2012 the grant of letters of administration to the estate of Mogire Nyakwana (deceased), were confirmed as per annexure "HM002".**
3. **That as per the confirmed grant of letters of administration the plaintiff was awarded a portion of 0.05Ha from land parcel LR No. Central Kitutu/ Mwabundusi/336 out of the deceased estate.**
6. Upon the confirmation of the grant and once the distribution of the estate has been determined the administrator is under a duty to distribute the estate in accordance thereof. The plaintiff avers that the defendant as the administrator of the deceased estate has neglected, failed and/or refused to execute his duties as such administrator to distribute the estate such that the beneficiaries obtain their own individual titles to their parcels of land and that the defendant has ignored demands and requests that he distributes the estate.
7. The defendant did not appear and/or file any response to the summons with the result that the plaintiff's averments are uncontroverted. The court has no reason not to believe the applicant on his averments. I find the application by the plaintiff/applicant well founded and I accordingly enter judgment in favour of the plaintiff/applicant and make orders in the following terms:-
  - i. **That the defendant be and is hereby directed to sign all necessary documents to effectuate the transfer of a portion measuring 0.05ha out of LR No. Central Kitutu/Mwabundusi/336 within 30 days of the date of service upon him of the decree herein failing which the Deputy Registrar of the court be and is hereby authorized to execute and sign all the necessary documents on behalf of the defendant.**
  - ii. **The plaintiff is awarded the costs of the suit to be paid by the defendant.**

**Judgment dated, signed and delivered at Kisii this 18<sup>th</sup> day of March, 2016.**

**J. M MUTUNGI**

**JUDGE**

**In the presence of:**

..... for the plaintiff

.....for the defendant

**J. M. MUTUNGI**

**JUDGE**