



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1056 OF 1994

IN THE MATTER OF THE ESTATE OF SAMSON SHAMOLA PERU (DECEASED)

RULING

1. Samson Shamola Peru, the deceased to whose estate these proceedings relate died intestate on 27th October 1991. On 25th August 1994 the Court granted the Grant of Letters of administration intestate to Dorcas Amatsa and Aggrey Magambo. The said grant of letters of administration was confirmed on 9th June 1995. The same listed the following properties; **L.R. Kakamega/Cheptulo/613; L.R. Kakamega/Cheptulo/615**; shares with Wandege and shares with K.T.D.A. the said assets were to be held in trust by the two administrators for Mary Idalitso, Jane Kasoha, Kennedy Tsieri, Julius Kibisu, Fredrick Mulindi, Calorine Makungu and Lindon Ingosi. Vide an application dated 2nd February 2015, Marita Mkazia and Heman Shunza the objectors /applicants sought revocation of the said grant on grounds that the grant of letters of administration was fraudulently obtained and that the respondents subsequently to the said sold **L.R. No. Kakamega/Cheptulo/615** wherein the matrimonial home of the 1st applicant and where the applicants reside to-date. That the applicants are threatened with forceful eviction within 7 days. The applicant seeks the following orders;
 - i. Pending the hearing and determination of the instant application inter partes, the Honorable Court be pleased to grant interim order of injunction restraining the 2nd respondents/petitioners, their employees, servants and/or agents from entering into, taking possession of, carrying out any construction thereon or excavating therefrom, carrying out any building, fencing, ploughing, selling, disposing, alienating or in any other way dealing with **L.R. NO. KAKAMEGA/CHEPTULU/615** or any part thereof.
 - ii. Pending the hearing and determination of the instant application inter partes, the Honorable Court be pleased to grant interim order of injunction restraining the 3rd respondent, his employees, servants and or agents from entering into, taking possession of, evicting the applicants therefrom, carrying out any construction thereon or excavating therefrom, carrying out any construction thereon or excavation therefrom , carrying out any building, fencing, ploughing, selling, disposing, alienating or in any other way dealing with **L.R. NO. KAKAMEGA/CHEPTULU/615** or any part thereof.
 - iii. That the grant of letters of administration granted to Dorcus Amatsa and Aggrey Magambo be revoked and or annulled.
 - iv. That the Honorable Court be pleased to grant an order directing the County Land Registrar, Kakamega to revert the titles to the **L.R. NO. KAKAMEGA/CHEPTULU/613** and **L.R. NO. KAKAMEGA/CHEPTULU/615** registered in the names of the 1st and 2nd respondent respectively into the names of the deceased.
 - v. That a new grant be issued in the joint names of the applicants and the petitioners.
2. The application is grounded on the grounds that;

That the grant was issued pursuant to defective proceedings as neither consent or citation was issued to the deceased's other beneficiaries and that the grant was obtained fraudulently and by using forged documents and by making false statement which omitted the full list of the deceased's beneficiaries/dependants of the estate of the deceased. That the grant obtained concealed the true extent of the deceased's estate of the deceased and that the petition was filed without the consent of all the beneficiaries; that the petitioners discreetly sold **L. R. NO. KAKAMEGA/CHEPTULU/615** where the deceased and 2nd applicant's matrimonial home is situated and that the 3rd respondent despite knowledge of the said fraud by the petitioners proceeded to purchase **L.R. NO. KAKAMEGA/CHEPTULU/615** and is therefore not a bonafide purchaser; that the 2nd respondent has taken possession of **L.R. NO. KAKAMEGA/CHEPTULU/615**, fenced it off, ploughed a portion thereof has threatened to demolish the structures thereon and evict the objectors and their family; that if the orders sought are not granted the objectors are bound to be rendered destitute with no alternative accommodation.

3. Subsequent to this application the respondents filed the application dated 5th march 2015 seeking orders to vary/set aside the Court's orders it orders of 16th February 2015 on such terms as it deems fit in the interest of justice; that the honorable court do order the officer in charge of Serem Police station to investigate and charge the 2nd objector for malicious damage to property and that the court grant such other or further orders as it deems fit.
4. I have read the affidavits filed by the parties and this is what I gather. The 1st applicant claims to be the 1st wife of the deceased as per her affidavit dated 2nd February 2015. She avers that she had one child with the deceased who is the 2nd applicant. She acknowledges the 1st respondent as the 2nd wife of the deceased. She avers that at the time the deceased died he was the registered proprietors of the following properties, **L. R. NO. KAKAMEGA/CHEPTULU/613** and **L.R.NO. KAKAMEGA/CHEPTULU/615**. She claims that the 1st and 2nd petitioner obtained the grant of letters of administration fraudulently by failing to disclose material facts and further that the 1st petition has transferred plot no. **L. R. NO. KAKAMEGA/CHEPTULU/613** into her name to hold in trust for the children and that **L. R. NO. KAKAMEGA/CHEPTULU/615** was sold to the 3rd respondent. She avers that her matrimonial home which she shared with the deceased is land parcel no. 615 where she resides to-date. The 1st petitioner on the other hand claims that she is the only widow of the deceased and that the 1st applicant is unknown to her and that she has never been to the parcel of land during the lifetime and even after the death of the deceased. She admits that the deceased left the two parcel of land 613 and 615 and that she has sold 615 to the 3rd respondent. The 3rd respondent admits buying parcel no. 615 from the 1st respondent.
5. It is evident that the 1st applicant's claim of being the deceased's widow is being challenged by the 1st respondent. This issue shall be determined at the time the summons of revocation is heard. What I need to decide is whether the injunctive orders given by this Court on the 16th February, 2015 should be varied/set aside or confirmed. Having read the affidavits and considered the oral submissions it is clear to this court that the 1st respondent is in possession of parcel no. 613. However, the 1st applicant and the 3rd respondents both claim to be in possession of parcel 615. The 1st applicant claims to be residing on the said parcel of land and states that the deceased was buried in the said parcel of land, whilst the 3rd respondent claims to be in possession having planted crops in the said parcel of land. In a further affidavit filed on 13th March 2013 the 1st applicant depones that the 1st respondent and her children did not attend the burial of their late husband. This latter fact was not controverted by the 1st and 2nd respondents.
6. For this court to grant an injunction the applicant must prove that he has a prima facie case with a probability of success; that he will suffer irreparable loss and if in doubt the court will decide the case on a balance of probability (see **Giela –vs- Cassman Brown [1973] 358**). It is not refuted that the 1st and 2nd respondents are in possession of Parcel no. 613. From the facts as deponed it

appears that the 1st and 2nd applicant are in actual possession of parcel no. 615. It is my view that the 1st and 2nd applicants/objectors, remain in the said parcel of land no. 615 until the summons for revocation is heard and determined. I therefore vary the order granted by this Court on the 16th February 2015 as follows;

An order of injunction to issue restraining the 1st, 2nd respondents/petitioners and the 3rd respondent/applicant, their employees, servants and/or agents from entering into, taking possession of, carrying out any construction thereon or excavating therefrom, carrying out any building, fencing, ploughing, selling, disposing, alienating or in any other way dealing with **L.R. NO. KAKAMEGA/CHEPTULU/615** or any part thereof until the summons for revocation is heard and determined. Prayers 5 and 6 of the application dated 2nd February 2015 shall be determined at the hearing of summons for revocation. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered this **30th** day of **March** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....For the Applicants

.....For the Respondents

.....Court Clerk