



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO.1305 OF 2013

[Formerly Siaya Succession No.29 of 2011]

**IN THE MATTER OF THE ESTATE OF: DOMINIC OMOR OBOTE alias DOMNICUS
OMORO OBOTE.....DECEASED**

AND

IN THE MATTER OF AN APPLICATION BY:

JAMES OTIENO AMOLLO.....PETITIONER

VERSUS

BARRACL EVANS OWEGI MUDHUNE)

GABRIEL OLANDO WANGBEL).....OBJECTORS

R U L I N G

1. When the matter came up for hearing of applicants application dated 27/11/14 I did order as a preliminary issue this court ought to determine prima-facie who has been using land parcel No. EAST GEM/ANYIKO/966.

Both parties seemed to refer the deceased as their cousin and or grandfather. I ordered that submissions be filed to determine this preliminary issue

2. I have perused the long history of their matter based on the several affidavits and the submissions. I am satisfied that the prima facie evidence presented by the objector Barrack Mudhune Owegi clearly shows that he has been in constant use of the land. This conclusion is informed by the correspondences between the local provincial administration in particular the Chief Yala Township Location and the District Officer Yala. The letter and the “agreement” dated 26/5/1993 buttress my above finding.

3. It appears that the applicant is a recent occupant of the suit property. He has not denied for a fact that he moved into the suit land somewhere in the year 2012. There is a house which he did construct. The respondent however seemed to have a long history of the use and occupation of the land.

4. Consequently and pending the determination of the substantive objection proceedings and taking cognisance of the prevailing circumstances I do order that;

- a. **The applicant James Otieno Amollo shall from the end of the year 2015 not plant, plough build or erect any structure or use the suit parcel of land EAST GEM.ANYIKO/966. Or in**

- any other way use the land to the detriment of the respondent, his servants and agents
- b. The applicant shall harvest the crops he has planted this year and may live in the house already constructed as at the time of this ruling till the determination of this cause.
 - c. the respondent Barrack Mudhune Owegi shall have exclusive use of the land but shall not dispose, charge or in any other way deal with the same so as to prejudice the determination of this cause.
 - d. The parties to formally fix this matter for full trial by way of viva voce evidence.
 - e. Each party to bear their respective costs.

Dated and delivered at Kisumu this 14th day of May 2015

H. K. CHEMITEI

J U D G E

In the presence of:

.....counsel for the petitioner/respondent

.....counsel for the objectors