



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION CAUSE NO.284 OF 2010

1. JAMES MWIMA SIKEDIAPPLICANTS

2. ALFRED OKUMU SIKEDI

AND

WILLIAM JOSI DIFFURESPONDENT

29/1/2014

Before: F. Tuiyott J.

Court clerk – Kadenyi

James Mwima Sikedi Applicant present in person

Alfred Okuna Sikesi

APPLICANTS

We pray for the orders in the Application of 15th April 2013.

F. TUIYOTT

J U D G E

R U L I N G

COURT

I am unable to grant the Application of 15th April 2013. The Applicants are holders of a confirmed Grant to the Estate of Gabriel Sikedi Mukupe (Deceased). The Deceased died on 18th November 1996. Some four months after his death, one William Josei Diffu lodged a caution in the Register to L.R. No.Bunyala/Bulemia/2028. That land was and still remains registered in the name of the Deceased.

It is that caution which the Applicants wish that this Court, a Probate and Administration Court, removes through their Application. The procedure for removal of a caution is now provided by Section 73 of The Land Registration Act, 2012. Sections 73 (1) 6(2) provides that,

“(1) a caution may be withdrawn by the cautioner or removed by order of the Court or, subject to

subsection (2), by order of The Registrar.

(2) The Registrar, on the Application of any person interested, may serve notice on the cautioner warning the cautioner that the caution will be removed at the expiration of the time state dint he notice.”

The other provisions to Section 73 set out the steps to be taken by the Registrar after issuing the notice.

So one way that the Applicants can seek removal of the caution is by applying for its removal to the Registrar. The other is by moving the Court for such order. But that Court is an Environment and Land Court not a Probate and Administration one.

F. TUIYOTT

J U D G E

29/01/2014