



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.348 OF 2010**

**IN THE MATTER OF THE ESTATE OF ESILO ONGELECH OMARANI (DECEASED)**

**ANTONY OMARANA ESILO .....PETITIONER**

**VERSUS**

**OMARANI ORONE ANYAITI .....INTERESTED PARTY**

**RULING**

1. Before me is the Amended Notice of Motion dated 15<sup>th</sup> January 2014 in which the Interested Party seeks the following orders:-

**“a) That the inventory of all the assets by the deceased filed herein be rectified to read L.R NO.SOUTH TESO/APOKOR/2093”**

2. The proceedings herein are in respect to the estate of Esilo Ongeleche Omarama (The Deceased). The Petition was presented by Antony Omarama Esilo (**the Petitioner** herein). In the Affidavit in support of the Petition, the Petitioner name South Teso/Apokori/428/2010 as the only asset of the Deceased estate. Notice the two numbers.
3. As he was wont to, after obtaining interim letters, the Petitioner moved the Court for confirmation through summons dated 9<sup>th</sup> August 2011. Therein he sought the distribution of LR South Teso/Apokor/428 (**not** South Teso Apokor/428/2010). What must have precipitated the current Application was the Respondents further Affidavit of 20<sup>th</sup> February 2012 in which he sought to now distribute South Teso/Apokor/4. It was no longer South Teso/Apokor/428/2010 or South Teso/Apokor428.
4. The complaint by the Interested party is that land parcel South Teso/Apokor/4 no longer exists as the register thereto ought to have been closed when the said land parcel was subdivided into two giving birth to land parcel South Teso/Apokor/1842 and 1843. He attached to his affidavit a copy of the green cards to LR No.s S. Teso/Apokor 1842, 1843, 1963 and 1964. The Interested party explained that parcel 1843 was transferred by the Deceased to one Joseph Etyang Oopa, while the Deceased caused further subdivisions to LR No.1842 which resulted into parcels 1963 and 1964. Parcel 1964 was subsequently registered in his favour and he remains the registered proprietor thereof.
5. In support of his position the Interested Party sought that the County Land be summoned to clarify the position in the registers to the controversial Land. In answer to Court summons, Mr. Gilbert Ondari Odingo The County Land Registrar, Busia County attended Court on 31/7/2013. He told Court that the Deceased proposed to subdivide parcel No.4. He showed Court the Mutation Form which showed that parcel No.4 was subdivided into parcels No.1842 and 1843. Thereafter plot No.1842 was subdivided into parcels Nos 2093 and 2094. The Registrar produced Certified

Extras to the register in respect to all these parcels. He explained that confusion was caused because the register to plot No.4 was not closed as required by the law upon subdivision.

6. Responding to the Application, the Petitioner filed a replying affidavit on 31<sup>st</sup> January 2014 in which he doubted the authenticity of the mutation forms said to give raise to the subdivisions. The Petitioner claimed that the Deceased never signed the Mutation Forms. In respect to the alleged subdivision of South Teso/Apokor/4, the Petitioner also pointed out some inconsistency in the acreages of the resultant land parcels. On the its part, the Court noticed that parcel No.4 was said to be approximately 5.2 hectares while one of the resulting subplots being South/Apokor/1842 was 5.23 hectares. Then interestingly, No.1963 which was one of the plots that resulted from the subdivision of plot No.1842 was even bigger, being 5.24 hectares. Worse still plot No.2093 which is a subdivision of plot No.1963 is 5.927 hectares, making it bigger than the land from which plot 1963 resulted.
7. Having heard both sides I reach a decision that the records produced by the Land Registrar by way of extracts of the titles to the respective land parcels reflect the position of the records held in the registry. Although the register to LR.No.4 does not appear to be closed, the extracts to the Registers to plots No.1842 and 1843 show that they resulted from the subdivision of plot no.4. For this reason I will accept the explanation given by the Land Registrar that it is erroneous that the register to No.4 was not closed. The reality nevertheless is that the said land parcel number no longer exists and ceased to exist formally upon the subdivision into plot Nos.1842 and 1843. Parcel No.4 cannot therefore be distributed as though it constituted the Deceased's estate. And at the outset the Petitioner had stated that parcel 428/2010 ( not parcel No.4) was the only property to the estate. From the records availed to Court only plot no.2093 is still in the name of the Deceased. That parcel is the only one available for distribution to his beneficiaries. For this reason I allow the Application.
8. In closing I must add that if the Petitioner doubts the *bonafides* of the records held at lands, he can challenge them by way of legal proceedings but in another forum.
9. On costs, I order that each party bears its own costs as the confusion was brought by an error committed in the land office and not contributed to by the parties herein.

**F. TUIYOTT**

**J U D G E**

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 26TH DAY OF MAY 2014.**

**IN THE PRESENCE OF:**

**KADENYI .....COURT CLERK**

**.....FOR PETITIONER**

**.....FOR INTERESTED PARTY**