



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**SUCCESSION CAUSE NO. 297 OF 2005**

IN THE MATTER OF THE ESTATE OF ALI BAKARI MWADZINYETO ALIAS ALI BAKARI HARRY (DECEASED)

ALI JUMA GANGU.....APPLICANT

VERSUS

1. MWALIMU RASHID JEPHER

2. RASHID JUMA MWAKULONDA

3. HASSAN OMARI HAMISI.....OBJECTORS

**RULING**

Before this court is the Notice of Motion application dated 6<sup>th</sup> May, 2014 by which the applicant seeks *inter alia* the following orders

“2. **THAT** the applicant herein be granted leave to substitute the applicant.

3. **THAT** the applicant be allowed to prosecute the applicant’s case in place of **ALI JUMA GANGU** as the legal administrators.

4. **THAT** the Honourable Court be pleased to issue a temporary injunction restraining the objectors either by themselves or their authorized servants, agents, employees and/or any other person acting under their instructions from purporting to trespass to the applicant’s property known as Plot No. **KWALE/WAA/79** and/or in any way trespassing into and/or dealing with and/or interfering with the aforesaid property pending the hearing and determination of the instant application.

5. Any other relief the court may deem fit.

6. **THAT** costs be in the cause.”

The application was opposed by way of a replying affidavit filed on 25<sup>th</sup> June, 2014 sworn by the 1<sup>st</sup> objector **MWALIMU RASHID JEPHER**. The court heard oral submissions from both parties on 26<sup>th</sup>

June, 2014.

Mr. Mwinyi counsel for the objectors stated in court that the objectors do not oppose prayers (2) and (3) of the Notice of Motion seeking to replace the original applicant one **Ali Juma Gangu** with the present applicant **HARRY BAKARI SHAFFI**. These prayers were necessitated by the death of the original applicant before the conclusion of the hearing. Annexed to the supporting affidavit is the death certificate serial number xxxxx confirming the death of Ali Juma Gangu on 1<sup>st</sup> January, 2014. Also annexed thereto is a Grant of letters of administration *ad litem* dated 15<sup>th</sup> April, 2014 to the present applicant which Grant is limited **only** to pursuance of a civil suit. I am therefore satisfied that sufficient ground has been shown to merit the award of prayers (2) and (3) of this Notice of Motion and I accordingly do allow these prayers.

By prayer (4) the applicant seeks a temporary injunction to prevent the objectors from entering upon, interfering with and in any way dealing with plot No. **Kwale/Waa/79**. This prayer for an injunction is to say the least mischievous. Plot No. 79 is the plot in dispute in this suit. The hearing of the objection commenced on 17<sup>th</sup> April, 2013. The crux of the matter is whether or not plot No. 79 forms part of the estate of the late **NDUGU MWAGUZO GWAYA**. To grant an injunction as prayed would be akin to prejudging the issue. I therefore decline to grant interim orders in terms of prayer (4). However in order not to prejudice any party I do direct that the current status quo be maintained pending the full hearing and determination of this objection. Costs in the cause.

**Dated and delivered in Mombasa this 15<sup>th</sup> day of August, 2014.**

**M. ODERO**

**JUDGE**

**In the presence of:**

**Mr. Mutugi h/b Mr. Mwinyi for Objectors**

**Applicant in Person**

**Court Clerk Mutisya**