



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Succession Cause 715 of 2009**

**IN THE MATTER OF THE ESTATE OF SOLOMON OLBAYO AMAKUSI ..... DECEASED**

**PETER KHABUNIKHI ..... APPLICANT**

**V E R S U S**

**DISHON MUSOTSI ANANDA ..... RESPONDENT**

**R U L I N G**

In the application dated 22.8.2012 the applicant is seeking orders that the ex-parte proceedings of 10.11.2009 together with order of 18.11.2009 and all subsequent orders be set aside. The applicant is also seeking to have the respondent's application that sought to revoke the grant be struck out. The application is supported by the applicant's affidavit sworn on the same date.

Miss Osabwa, counsel for the applicant submitted that the respondent came under certificate of urgency and got orders on the 18.11.2009. Since they have not taken any further action the applicant was issued with a grant and the respondent was aware about it. The succession was done before the Maseno Law Courts. A dispute was handled by the Emuhaya Land Disputes Tribunal and the respondent was a party to those proceedings. The respondent in the current application is not related to the deceased and merely filed the application for the revocation of the grant to punish the applicant.

Mr. Chitwa, counsel for the respondent opposed the application. Counsel submitted that on the 18.11.2009 orders were granted by the court. The court directed that the Maseno succession cause file be brought to this court. The Maseno case involved the respondent's father. The respondent contends that the applicant purported to be a son of the deceased and that was fraudulent. The respondent would like to have the suit land revert to the deceased. The applicant herein would like to sell the land to the Emuhaya Constituency Development Fund.

The record of this file shows that the respondent filed an application dated 18.11.2009 under certificate of urgency. No orders were given and the application was listed for hearing on 19.1.2010. On 18.2.2010 parties appeared before Justice Lenaola and Mr. Osango who was holding brief for the applicant's counsel applied for adjournment. Mr. Chitwa opposed the application and the court granted prayer 2 of the application dated 18.11.2009 pending the hearing and determination of the summons for the revocation of the grant dated 10.11.2009. The court further directed that Maseno Court Succession Cause No. 34 of 2006 be brought to this court. That directive has been complied with. On the 27.4.2010 counsel for the respondent appeared before Justice Lenaola and the court made further direction that the Maseno file be brought to this court. The case was listed for directions for 21.7.2010. On that date the respondent's counsel was there but there was no appearance for the current applicant and the court reiterated its earlier orders that the Maseno file be brought before this court. On the 22.8.2012 the current application was filed under certificate of urgency and it was certified and listed for hearing on 11.9.2012. On that date the application was heard.

The grounds upon which the current application is made is that the respondent filed the application for the revocation of the grant mainly to punish the applicant. The applicant is the registered owner of the suit land. The respondent's citation was filed after the expiry of 30 days and the respondent lacks locus standi to file the application. From the court record it is clear that the matter could not have proceeded before the Maseno court file was brought to this court. The record shows that the file was forwarded on the 21.7.2010. What is now remaining is to have the dispute fully heard and determined. The applicant herein

could have listed the matter for directions and have the dispute prosecuted. Instead he opted to use a short-cut and have the respondent's application for the revocation of the grant struck out. There are no good reasons for striking out that application. It is contended that the applicant filed the succession cause at Maseno Court fraudulently. That issue has to be determined by the court. Whether the respondent lacks the locus standi to seek revocation of the grant is an issue to be determined during the hearing of that application. There has been no delay on the part of the respondent to prosecute the application for the revocation of the grant.

In the end, I do find that the application dated 22.8.2012 lacks merit and the same is dismissed with costs.

*Delivered, dated and signed at Kakamega this 27<sup>th</sup> day of February, 2013*

**SAID J. CHITEMBWE**  
**J U D G E**