



REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 759 of 1994

IN THE MATTER OF THE ESTATE OF SULEIMAN DARAJA OSORE .. DECEASED

SHABAN MUSUMBA HAJI APPLICANT

V E R S U S

KASSIM O. DARAJA

ABDALLA S. DARAJA RESPONDENTS/PETITIONERS

AND

JULIUS LIKAMASIA INTERESTED PARTY

R U L I N G

The application dated 15th August 2012 seeks among other prayers orders restraining the respondent from evicting the applicant or in any other way dealing with plot number **KAKAMEGA/LUGARI/898** or any of the resultant sub-divisions. The application is supported by the applicant's affidavit.

Mr. Ondieki, counsel for the applicant stated that the applicant is the grandson of the deceased. The confirmed grant that was issued herein was revoked on 19/10/2004 by Justice G.B.M. Kariuki. Since then the estate remained un-administered. The interested party used the revoked grant and sub-divided the suit plot on 24/9/2009. Thereafter got himself registered as the proprietor of one of the sub-divisions, being plot number **KAKAMEGA/LUGARI/2809**. The Interested party filed land award number 27 of 2007 against Abdalla Suleiman and obtained an eviction order. He is now evicting people from the suit land. Those being evicted were not parties to the land award case.

Mr. Wekesa, counsel for the respondent opposed the application. Counsel relied on the replying affidavit sworn on 4th December, 2012. The respondent contends that the interested party has been evicted from the premises and annexed a letter from the Lumakanda police station dated 27/9/2012. Mr. Wekesa submitted that the interested party was awarded three acres in land Award number 27 of 2007. Currently, plot number **KAKAMEGA/LUGARI/2808** is registered in the names of the respondent. The orders granted in the Land Award have been discharged.

I have carefully read the court record. The background to this matter is that the late SULEIMAN DARAJA OSORE died on 7th November 1990 at Chekalini sub-location. He was survived by his two sons namely – **KASSIM OSORE DARAJA** and **ABDALLA SULEIMAN DARAJA** and his widow **MWANAISHA MUKOYA DARAJA**.

The two sons filed this succession cause in 1994 and were issued with a grant of letters of administration intestate on 4th July 1995. The petitioners then filed an application for the confirmation of the grant dated 14th December 1995 and the grant was confirmed on 31/1/1996. The deceased's estate was to be distributed as follows:-

KASSIM OSORE DARAJA	-	S/WANGA/LUREKO/1207	½ SHARE
ABDALLA SULEIMAN DARAJA	-	“	½ SHARE
KASSIM OSORE DARAJA	-	S/WANGA/BUCHIFI/918	½ SHARE
ABDALLA SULEIMAN DARAJA	-	“	½ SHARE
KASSIM OSORE DARAJA	-	KAKAMEGA/LUGARI/897	½ SHARE
ABDALLA SULEIMAN DARAJA	-	“	½ SHARE
LUGARI MUSLIM MOSQUE	-	KAKAMEGA/LUGARI/898	0.42 ACRES
ABDALLA SULEIMAN DARAJA	-	“	0.4 ACRES
JULIUS LUKAMASIA	-	“	3.0 ACRES
MWANAISHA MUKOYA DARAJA	-	“	0.1 ACRES

On 4th June 2003, Mwanaisha Mukoya Daraja filed an application dated 3.6.2003 seeking to have the confirmed grant revoked. She contended that she was the widow of the deceased and was not consulted when the petition was filed. On 19.10.2002 parties appeared before Justice G.B.M. Kariuki and by consent the grant was revoked. Since then no action took place in this matter.

The applicant herein claims to be the grandson of the deceased. He does not state who among the two original petitioners, that is Kassim O. Daraja or Abdalla S. Daraja is his father. He has averred that Abdalla raja is his uncle. He would like to replace his grandmother, Mwanaisha Mukoya Daraja who is now deceased. It is not stated whether Kassim Daraja and Abdalla Daraja are still alive.

From the pleadings herein, it is possible that the respondent purchased the three acres of plot number **KAKAMEGA/LUMAKANDA/898** from both Kassim Daraja and Abdalla Daraja. The two petitioners included the respondent in their application to have the grant confirmed. Mwanaisha Daraja, in her application to have the grant revoked indicated that the petitioners had included the respondent in the petition yet he is not a beneficiary.

It appears that the respondent conveniently filed a land dispute cause against Abdalla Daraja claiming three acres of land while knowing that the succession cause was pending. Since Abdalla Daraja was not the proprietor of the suit land, I do find that the procedure used by the respondent to obtain registration as the proprietor of a portion of plot number **KAKAMEGA/LUGARI/898** was illegal. The grant was revoked and any land dispute Tribunal could not have dealt with the matter before the succession cause was finalized. The respondent is not claiming to have bought the three acres from the owner Suleiman Daraja Osoro. Any Land Dispute Tribunal could not have ordered the sub-division of the suit land after the death of the registered owner with succession having been finalized.

The original objector's application dated 3rd June 2003 was allowed by consent. The application sought to have the confirmed issued on 31.1.1996 revoked and the objector, Mwanaisha Mukoya Daraja be made the administrator. Ideally, Mwanaisha's claim would have been for a life interest. Since she is now deceased, Kassim Daraja and Abdalla Daraja would be the ones to apply and have themselves become the administrators. It is not clear what happened to the other properties mentioned in the revoked

grant.

Although the interested party could have a valid claim over the deceased's estate, I do find that he used an illegal process to obtain title to part of the estate. The adage that the end justifies the means cannot apply when the means used are illegal. I do find that the application dated 15th August 2012 is merited and the same is granted in terms of prayers **(b)**, **(c)** and **(d)**. The respondent, if in occupation, shall continue to occupy part of plot number **898**, Lugari. A fresh grant to be issued to the applicant who shall thereafter make an application to have the grant confirmed. The application for confirmation of the grant to be served upon the respondent, Kassim Daraja and Abdalla Daraja or any of their beneficiaries. Each party to meet his own costs.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E