



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 300 OF 2002

IN THE MATTER OF THE ESTATE OF MUSOMBA KIOKO (DECEASED)

BEATRICE KATHINI KIILU..... PETITIONER

VERSUS

- 1. BEATRICE NZEVE MUSOMBA**
- 2. JONATHAN KIETI MUSOMBA**
- 3. KILONZO MUSOMBA**
- 4. SAMUEL MUTINDA MUSOMBA**
- 5. RUTH MUSOMBA**

6. KIOKO MUSOMBA RESPONDENTS

AND

FRANCIS MUTULA MUTISO INTERESTED PARTY

R U L I N G

1. The **Chamber Summons** application dated 7/12/2010 is brought under **section 47** and **section 93 (1)** of the **Law of Succession Act**. The application seeks the following orders:-
 - a. **(Spent)**
 - b. **That this Honourable court's ex-parte orders dated 1/3/2006 restraining the interested party/applicant from disposing, transferring or alienating Plot Numbers:-**

1. Machakos/Matuu/4111
2. Machakos/Matuu/4110
3. Machakos/Matuu/4112
4. Machakos/Matuu/4116
5. Machakos/Matuu/4134
6. Machakos/Matuu/4109
7. Machakos/Matuu/4108
8. Machakos/Matuu/4105
9. Machakos/Matuu/4091
10. Machakos/Matuu/4092
11. Machakos/Matuu/4090
12. Machakos/Matuu/4080
13. Machakos/Matuu/4081
14. Machakos/Matuu/4088
15. Machakos/Matuu/4089
16. Machakos/Matuu/4050

- 17.Machakos/Matuu/4061
- 18.Machakos/Matuu/4079
- 19.Machakos/Matuu/4106

- c. **That prohibitory orders issued by this Honourable Court against the above listed nineteen (19) titles (plots) on 1/3/2006 be set aside and/or lifted.**
- d. **That costs of this application be paid by the Objector/Respondent.**

2. According to the affidavit in support sworn by the Interested Party/Applicant, **Francis Mutula Mutiso**, he is the registered owner of the nineteen (19) plots which are the subject matter of this application. That he purchased the plots from the Petitioner herein following the confirmation of the grant herein and the same were validly transferred to him.
3. The Applicant's complaint is that the *ex parte* orders made on 1/3/2006 restraining him from transferring or in any way alienating the aforesaid properties until further orders of this court are unfair and/or unjust as the said properties do not form part of the estate of the deceased and the Applicant has invested substantial capital in the said property.
4. In opposition to the application, the 1st Respondent, **Dominic Mutinda Kalunga** swore a replying affidavit on 16/6/12. The 2nd Respondent has described himself as the beneficiary of **Plot No. Machakos/Matuu/4079**, one of the plots claimed by the Applicant. According to the 1st Respondent, the orders granted by the court on 1/3/2006 are fair. That the said orders have been in force for more than six years and the court ought to hear the application for revocation to reverse the illegal transfer of **Plot No. Machakos/Matuu/4079**.
5. The firm of **Nzei & Company Advocates** appeared for the Applicant while **J.A. Makau & Company Advocates** appeared for the 1st Respondent. The application was canvassed by way of written submissions which I have duly considered.
6. On 1/3/06 **Onyancha J**, made the following orders:-
 - a. **The Interested Party, Francis Mutula Mutiso, is hereby restrained from disposing of, transferring or in any other way alienating the properties listed in the Grant of Letters of Administration confirmed on 30/1/2004 until further orders of this court.**
 - b. **The Machakos District Land Registrar is hereby prohibited from registering any dealing in respect of the properties in the Grant of Letters aforementioned until further orders of this court.**
7. I am in agreement with **Onyancha J**, that the issues raised in respect of the aforesaid properties are quite serious and intricate. On 16/11/2009 it was directed by the court that the claims by the Interested Party and by the Objectors be determined by way of *viva voce* evidence. This has never come to be. Instead the Interested Party has come up with the application at hand. My view is that the instant application cannot settle the issues on whether the properties in question are covered by **section 93** of the **Law of Succession Act**.
8. Consequently, the orders dated 16/11/09 ought to be complied with so that this matter is settled once and for all. The application is therefore dismissed with costs.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 4th day of September 2013.

B. THURANIRA JADEN

JUDGE