



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

SUCCESSION CAUSE NO. 55 OF 2007

IN THE MATTER OF: THE ESTATE OF OMAR MOHAMED ISSA

AND

**IN THE MATTER OF: AN APPLICATION BY ABDALLA MOHAMED
ISSA**

RULING

1. In considering the application before me, I have called for and perused the file in Succession Cause No. 72 of 2012 filed by the present Petitioner/Applicant in respect of the estate of Omar Sheikh Bin Athman his alleged grandfather.

The Deputy Registrar ordered in the latter cause on 10th June, 2013 that:

“The deceased's estate herein is allegedly comprised of Plot Nos. 371 and 223 Malindi. The same were subject matters in Malindi HC SUCC. Cause No. 55 of 2007 wherein a grant was confirmed on 15th December, 2009. We cannot have two grants in respect of the same estate unless the one issued in Succ. No. 55 of 2007 was revoked.”

2. This order has seemingly provoked the present application dated 14th June, 2013 which seeks inter alia:

“1. THAT the grantissued to the said ABDALLA MOHAMED ISSA in this matter on 15th December, 2009 be rectified in the following respects as provided for by Rule 43(1) of the Probate and Administration Rules.

a) THE property described as Plot No. 371 Malindi be removed from the schedule and list of properties to which the grant applies;

b) THE property described as Plot No. 223 Msabaha be removed from the schedule and list of properties to which the grant applies.”

The applicant is also seeking that a new certificate of confirmation in respect of Succession Cause No. 55 of 2007 be issued.

3. The main reasons given are that the above properties belong to the estate of the applicant's grandfather the late Omar Sheikh Bin Athman and that there was a mix up in instructions given to his previous lawyers in this regard, Messrs Angima and Co. Advocates. Secondly, that he has now filed a succession cause in respect of his grandfather's estate, namely Succession Cause no. 72 of 2012. He therefore desires to have the “errors” rectified.

4. From the documents filed by the same applicant in Succession Cause No. 72 of 2012, the properties have been the subject matter of protracted litigation between the applicant and others including Mohamed Abbas, since 1995. The history of the dispute is set out in the judgment of the Kadhi, Malindi given in **Civil Case No. 3 of 1995, Abdalla M. Issa v. Mohamed Abbas** on 26th March, 2004. The Kadhi dealt with the issue of the inheritance of the estate of the late Omar Sheikh Athman who died in 1918. That notwithstanding, the present applicant who was the plaintiff in that suit subsequently filed Succession Cause No. 55 of 2007 in the High Court and obtained a grant in his favor.
5. He now desires that the court views the inclusion of the two properties in Succession Cause No. 55 of 2007 as an error. Where is the error? By the time he filed the said cause he was well aware of the determination of the dispute over the inheritance of his grandfather's estate by the Kadhi. He had not appealed the Kadhi's decision and it would seem that he was trying to sidestep the decision by filing the said succession cause in the High Court. After the confirmation of the grant in succession cause 55 of 2007, the same Petitioner went ahead to file Succession Cause No.72 of 2012. That cause touches on the same properties. The Applicant clearly intends to litigate afresh on settled matters and is running circles around the court. The present application is an abuse of the court process.
6. Similarly Succession Cause No. 72 of 2012 represents an attempt to reopen a settled dispute under the guise of a fresh succession cause. The Applicant cannot be allowed to continue to abuse the court process in this manner.
7. While I dismiss the application made for rectification, I also order that succession Cause No. 72 of 2012 be struck out.

A copy of this ruling to be placed in the two succession causes namely Nos. 55 of 2007 and 72 of 2012.

Delivered and signed at Malindi this **2nd** day of **December, 2013** in the presence of Mr. Otara for the Applicant.

Court clerk – John Mwebi

C. W. Meoli

JUDGE