



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO. 394 OF 2011

IN THE MATTER OF THE ESTATE OF BARASA WANZALA OPATA (DECEASED)

B E T W E E N

1. EVERLYNE NIGHT EYALE

2. RASHID OKUMU BARASA PETITIONERS/APPLICANTS

V E R S U S

**PETER WANGA
KHACHINAR
ESPONDENT**

R U L I N G

The application dated 5.7.2011 seeks the following orders:-

“(1) That the Respondent having intermeddled with the

deceased's parcel of land title No. **N/Wanga/Khalaba/1320** be ejected therefrom and any structures thereon be demolished at his own cost.

(2) That the Respondent by himself, servants and/or agents or any one acting through him be restrained by a permanent injunction from entering, cultivating or in any other way interfering with the said parcel title No. **N. Wanga/ Khalaba/1320** which forms part of the deceased's estate or any part thereof."

It is the applicants' case that the Respondent unlawfully and without consent, forcefully entered and occupied the deceased's parcel of land No. N.WANGA/KHALABA/1320 and remained there despite requests made to him to vacate the land. That the Respondent had bought two acres of land from the deceased from a different parcel of land which parcel of land was transferred to him. It is further stated that the Respondent has no claim to the suit property and is unlawfully occupying the same.

In response to the applicants claim, the Respondent contends that his father, the late SILVESTER OJWANG KHACHINA purchased the suit property from the deceased and obtained the consent of the Land Control Board and a title deed was subsequently issued in the name of his late father, SILVESTER OJWANG KHACHINA. The Respondent denied having intermeddled with the suit property and stated that he has lived there since 1998. That it was not until year 2004 that the 2nd Respondent started threatening to remove him from the land.

Although the applicants question the process of transfer of the land, it is clear that the land is not currently in the name of the deceased. The title deed exhibited (annexure "PWK6") is in the name of **SILVESTER OJWANG KHACHINA**.

The affidavit evidence by the applicants does not challenge the Respondent's contention that he has been in occupation of the suit land since 1998. In the premise, the present application is not a solution to the applicants' problems.

With the foregoing, the application fails with costs to the Respondent.

Delivered, dated and signed at Kakamega this 16th day of February, 2012.

B. THURANIRA JADEN

J U D G E