



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 229 OF 1996**

**IN THE MATTER OF THE ESTATE OF THE LATE WANJERA A. MUNANGA – DECEASED**

**BETWEEN**

**JACKSON SHAPAYA AMERE.....PETITIONER/  
RESPONDENT**

**VERSUS**

**ELPHAS ASEKA AKHUNGU .....OBJECTOR/  
APPLICANT**

**RULING**

**1.** On 26.3.1998, *Tanui, J.* appointed **Jared Amele Anyela**, (son of the deceased herein) as the administrator of the deceased's estate. He added as follows in doing so:

***“If any party ..... has any interest he should claim it against the Petitioner.”***

**2.** On 7.4.1999, Jared Amele Anyela aforesaid sought to confirm the grant and on 10.5.1999, the same was confirmed and land parcel No. Marama/Shinamwenyuli/519 was to be inherited as follows;

- i) Jackson Shapaya Nyangweso - 5 acres
- ii) Jared Amele Anyela - 2 acres

3. On 8.2.2000 however, one Elphas Aseka Akhungu filed a Summons for Rectification seeking orders that the Certificate of Confirmation of grant be rectified so that Jared Amele Anyela should inherit the whole 7 acres comprised in the title. His reason for doing so was that the certificate was extracted contrary to the orders made on 26.3.1998 when the grant was revoked and a fresh one issued to Jared Anyela. From the record, Elphas Akhungu aforesaid was claiming that the deceased was his father and that he too was entitled to the land (see Affidavit sworn on 14.1.1997).

4. **Tanui, J.** upon hearing parties, dismissed Akhungu's Application dated 8.2.2000 and advised him to file suit against Jared Anyela if he had any claim to the land.

5. What is now before me is an Application by Jackson Shapaya Amere dated 3.2.2003 seeking orders that the restrictions placed against title No. Marama/Shinamwenyuli/590 vide H.C.C.C. No. 73/2002 (O.S.) be removed.

6. I have seen the greencard for titles Nos. 590 and 591. No. 590 is registered in Shapaya's name while 591 is registered in the deceased's name.

7. The Succession proceedings before me relate to title No. 591 and I see no reason to make any orders relating to title No.590 which is not an asset subject to distribution by this court. The Applicant's complaints if at all, for that reason alone would have no merit at all.

8. The Applicant, Jackson Shapaya should therefore pursue his claim elsewhere than in the present proceedings.

9. Lastly, this Cause has been pending since 1996. I note that the grant was confirmed and subsequently, Elphas Aseka Akhungu obtained orders in HCCC. 73/2000 (O.S.) that he should be registered as proprietor of 5 acres of land to be excised out of title No. 591.

10. I have stated elsewhere above that the 5 acres had been ordered by *Tanui, J.* to be inherited by Jackson Shapaya. He has now lost that 5 acres by proceedings elsewhere. It is to those proceedings that he must return if he wants the land as he seems to.

11. In any event, the Application dated 3.2.2003 is without merit for reasons given and is dismissed with no order as to costs.

12. Orders accordingly.

***Delivered, Dated and Signed at Kakamega this 22<sup>nd</sup> day of February, 2011.***

**ISAAC LENAOLA**

**JUDGE**