



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 418 OF 2001

IN THE MATTER OF THE ESTATE OF SAIDI MANGALA JUMA– DECEASED

BETWEEN

MWANAHAWA MUSHIERE

SAIDIPETITIONER

VERSUS

PAULINE OGANY AMBULULIOBJECTOR

RULING

1. I have read the Application dated 18.5.2010 and at the moment, all I am required to do is to see whether there is good reason to preserve the land parcel known as **Butsotso/Shibeye/4972** and any resultant sub-division thereof, pending the hearing of the Summons for Revocation premised on **S. 76** of the Law of Succession.
2. From the supporting Affidavit of Pauline Agany Ambululi, it is her case that she was the widow of one Shem Ambululi Makunda (deceased). That Shem was a brother of Saidi Mangala Juma who is the deceased in this case.
3. Further, that the two brothers were parties to H.C.C.C. No. 457/1994 (O.S.) where Judgment was entered in favour of Shem and land parcel **No. Butsotso/Shibeye/642** was to be sub-divided and mutations were done to create parcels **Nos. Butsotso/Shibeye/4971** and **4972** but Saidi died before transfer of parcel No. 4972 to Shem.
4. That when the present cause was filed, all the above information was placed before court and parcel No. 4972 was transmitted to Mohamed Mwanda Muhanya and Rukia Khayesi in a bid to defeat the claim by Shem and now his legal representative, Pauline, aforesaid.
5. In her Replying Affidavit sworn on 22.10.2010, Mwanahawa Mushiere Saidi deponed that Shem was her husband's nephew and had no lawful claim to Saidi's estate. Further, that the Judgment in HCCC 457/1994, was suspect as it was delivered after Saidi had long died. In any event that suit had long abated

and no execution pursuant to it could be undertaken.

6. On my part, and since the substantive proceeding is the Summons for Revocation, I am satisfied that the Applicant's claim is not idle and *prima facie*, she may well have a discernible interest in the parcel of land, No. 1492. That interest needs to be investigated in view of the issues raised by the Respondent and to see whether there is any lawful reason to revoke the grant and take that interest into account when redistributing the estate, should that action be necessary.

7. It is therefore in the interests of justice that the suit land be maintained in its current status until the Revocation proceedings are heard and determined on their merits.

8. I will issue the inhibition as is sought at prayer (i) of the Application dated 18.5.2010 and in the meantime directions should be taken as regards prayers (ii), (iii), (iv), (v), (vi) and (viii) of that Application.

9. Each party will in the meantime bear its own costs.

10. Orders accordingly.

Delivered, Dated and Signed at Kakamega this 14th day of April, 2011.

ISAAC LENAOLA

J U D G E