



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 18 OF 1986

IN THE MATTER OF THE ESTATE OF OTHORO ALAL.....DECEASED

AND

IN THE MATTER OF AN APPLICATION BY: SAMUEL ODONGO AMBASA

AND

IN THE MATTER OF AN OBJECTION BY: LUKAS OKADO AWADHA

VERSUS

VINCENT OHUNG' ABONDO.....INTERESTED PARTY/APPLICANT

RULING

The proceedings herein have a long history and in order to understand the present, it is important to set out the past briefly. The cause was filed as Succession cause Number 18 of 1986. The supporting affidavit indicates that the cause was filed by one Samuel Odongo Ambasa with consent of his mother and as a son of the deceased Othoro Ala who had died on the 31st day of December 1980. The proceedings were intestate one Lucas Okado Awadha presented an application seeking revocation of the grant which had been issued to Samuel Odongo Ambasa on the 19th day of August 1986. The revocation proceedings appear to have been heard on 4/3/92. The proceedings traced on the record reveal that the grounds raised by counsel for the objector were:-

- (i) The grant was issued in 1986, but upto that date no application for confirmation had been made.**

(ii) The applicant had falsely deponed that he is a son of the deceased when in fact he was only a nephew.

(iii) The deceased had been survived by three daughters who had not been consulted.

(iv) The supporting affidavit had been falsely sworn by Samuel's mother as the widow of the deceased and yet the deceased did not leave any surviving widow.

(v) That even before the grant had been confirmed the petitioner conspired with the land Registrar at Siaya and had the land subdivided selling a portion and using the other as security for a loan.

In response, one Samuel Odongo Ambasa had this to say:-

(i) He had no knowledge of the person who was objecting

(ii) Conceded that he swore an affidavit stating that he was a son of the deceased.

(iii) Contended that he is a son of the deceased.

(iv) Concedes that the lady who swore the supporting affidavit was not his mother and not a widow of the deceased but a sister in law of the deceased

(v) He told the court he was the only son and three daughters.

(vi) He conceded he did not obtain the consent of the daughters.

(vii) Conceded that he had not applied for confirmation of the grant

(viii) Conceded that the land had been subdivided through Siaya Land Registry.

The objection proceedings were allowed on 4th March 1992, and the grant issued to Samuel Odongo Ambasa on 19th August 1986 revoked. There is traced on the record of minutes of a survey of the history of the file which is to the effect that by the time the grant issued to one Samuel Odongo Ambasa was revoked, land parcel number North Sakwa / Nyawita / 82 had been subdivided into the parcels namely North Sakwa / Nyawita /1062 and 1063. It is further noted that parcel number 1063 was sold for valuable consideration to one Vincent Ochung Abondo and parcel number 1062 used as a security to obtain a loan of Kshs. 71,000/= from K. C. B. Bank which loan was not repaid leading to the property being sold to one Vincent Ochung Abondo.

It was further revealed from the said survey notes that the objector one Lucas Okado Awadha is a relative of the deceased being a son of a sister of the deceased. That he had successfully objected to the issuance

of the grant to Samuel Odongo Ambasa which grant was revoked on 4th March 1992, which revocation was not effected by the Siaya Lands Office because title to land parcel number North Sakwa / Nyawita /82 had been closed. Instead of pursuing the reversal of the resultant titles back to the original title number North / Sakwa / Nyawita / 82 for purposes of confirmation of the grant in Succession Cause number 18 / 1986 the objector went and filed Succession Cause Number 35 of 1994 whereby the grant was confirmed on 4th June 1998 and the entire parcel number North / Sakwa / Nyawita / 82 devolved to the said Lucas Okado Awadha. The said Lucas Okado Awadha is shown to have filed suit number 199/1997 (OS) for the cancellation of the subdivisions. A perusal of a copy of the proceedings on the record reveals that the said originating summons was dismissed by I. C. C. Wambiliyangah Judge as he then was (rtd) on 19th February 1998 on account of failure to disclose a reasonable cause of action. The note reveals that an application for reversing of the dismissal orders in HCCC 199/1997 (OS) are still pending.

The said Lucas Okado Awadha appears to have moved and filed HCCC Number 138 of 2004 seeking declaratory orders and for transfer of land parcels number 1062 and 1063 to the said Lucas Okado Awadha. It is noted a ruling was reserved by Warsame J but the same is not traced on the record. It is further noted that the revoked grant could not be traced. File number 199/1997 (OS) is enclosed in this file and it reveals clearly that indeed an application for review of the dismissal order is still pending herein.

File number HCCC No. 138 of 2004 is also enclosed. A perusal reveals that there appears to have been an interim application argued and a ruling reserved for delivery on 17th March 2005. A further perusal of the record reveals the existence of an originating summons dated 6th day of October 2004 and filed the same date. It appears to have been accompanied by an interim application seeking preservative orders but a copy of the application is not traced on the record. But the Respondents Replying affidavit is in the file. It is not clear whether Warsame judge wrote and delivered the mentioned applications ruling or not.

There is also traced in the current succession cause No. 35 of 1994, and a perusal of the same reveals that indeed presented to court by one Lucas Okado Awadha with the consent of the daughters of the deceased Othoro Alal namely Anastasia Olal d/o Othoro Peris Arwa d/o Othoro Alal Ogombe d/o Othoro on the 18th day of June 1993. The first grant was issued by Wambiliyangah judge as he then was (now rtd) on the 2-12-1996. A perusal of forms P & A5 reveals that the property subject of the application was Nyawita/North Sakwa/82. The confirmation was effected on the 4th day of June 1998.

A revisit back to file number 18 of 1986 reveals that one Lucas Akado Awadha has come back to the same file and presented a chamber summons dated 9th day of August 2010, being an application filed the same date. The provision under which the same is presented has not been indicated. Three reliefs are sought namely:-

- 1) That the Honourable court be pleased to order that all the transactions that were done concerning his estate and mainly on land parcel No. 82 of the deceased through the grant issued to Samuel Odongo Ambasa be annulled.**
- 2) That the District land Registrar be ordered to cancel all the sub-divisions made on the land parcel No. North Sakwa/Nyawita/82 and it be given back to Lucas Akado Awadha the administrator of the estate.**
- 3) Costs in the cause.**

When this application went before Karanja judge on 17-11-2010, it transpired that the court learned that the revoked grant was still in the hands of the land registrar Siaya and the court duly issued orders for the

said grant to be returned to court.

During the pendance of the hearing of the aforementioned application, is when the petitioner/applicant presented an application dated 15-3-2011 and filed on the dame date seeking four reliefs namely:-

(a) That this application be certified as urgent and be heard ex-parte at the first instance.

(b) That pending the hearing and determination of this application inter-partes, the petitioner herein Samuel Odongo Ambasa either by himself, agents, servants or any person acting through his instructions be restrained by a temporary order of injunction from selling, transacting, surveying, sub-dividing, disposing or in any other way interfering with the land parcel Nos. North Sakwa/Nyawita/1062 and 1063 or any parcel thereof which is a resultant sub-division of land parcel No. North Sakwa/ Nyawita/82.

(c) That pending the hearing and determination of this suit ,the petitioner herein Samuel Odongo Ambasa either by himself, agents, servants or any person acting through his instructions be restrained by a temporary order of injunction from selling, transferring, surveying, sub-dividing, disposing or in any other way interfering with the land parcel No. North Sakwa/Nyawita/1062 and 1063 or any parcel thereof resultant sub-division of land parcel No. North Sakwa/82.

(d) The cost of the application be provided for.

It is on record that this application came before this court on 15-3-2011 and without the court having an opportunity or time to go through the record, and acting on the paper work filed in support of the application granted interim orders in terms of prayer 2 of the application thereof. It has now transpired that the granting of the interim orders is what went to aggrieve the current applicant of the application subject of this ruling. It is brought by way of a notice of motion dated 28th day of March 2011, and filed the same date. It is brought under the provisions of section 3, 3A of the CPA, under rule 10 (2) of the Civil Procedure Rules and all enabling provisions of the law. Three reliefs are sought namely:-

(1) The instant application be certified urgent and be heard ex-parte in the first instance.

(2) The honourable court be pleased to enjoin the applicant herein Vincent Ochieng Abondo as an interested party in these proceedings more particularly touching on the application for orders of injunction in respect of land parcel No. North Sakwa/Nyawita/1062 and 1063.

(3) That costs be provided for.

The grounds in support are set out in the body of the application, supporting affidavit and oral submission in court and these are:-

- Before the respondent to this application came on board, there was an administrator by the name Samuel Odongo Ambasa who petitioned and was granted letters of administration to the estate of one Othoro Alal.

- Upon being issued with the grant and even before confirmation the said original administrator one Ambasa caused the deceased's property North Sakwa/Nyawita/82 to be subdivided into number 1062 and 1063. One was sold to the current applicant and another one he pledged to the bank as security but never repaid the loan and the pledged security was also sold to the current applicant in a public auction.
- That the Respondent to the current application one Lucas Okado Awadha come on board later on, and had the grant issued to Ambasa revoked.
- It is complained that him Lucas has taken over the said parcels and intends to dispose them off to the detriment of the applicant.
- That it is therefore necessary for the applicant to be joined in these proceedings.

In response the current administrator herein Mr. Lucas Okado Awadha put in a response by way of a replying affidavit deponed on the 7th day of April 2011, and filed the same date. The salient features of the same are :-

- That the said Vincent Ochung Abondo should not be joined as a party herein because he does not enjoy either equitable nor legal rights to those lands in other words he is a stranger in this matter.
- That the matter was decided way back on the 4th day of March 1992 when the grant to Ambasa was revoked.
- That he has done succession and the grant that may link the current applicant to these proceedings is the one which was revoked on 4th March 1992.
- There is a certificate of confirmation issued in his favour to this estate on 4th day of June 1998.
- That this case has been in court since 1986 and the current applicant has never been party to it and it is surprising that he now has expressed an interest.

This court has given due consideration to the afore set out rival arguments and in this courts opinion, the following are own framed questions for determination in the disposal of this matter:-

- (i) What are the general observations made by this court with regard to the dispute herein?
- (ii) What relief is the applicant seeking from the court herein?
- (iii) What ingredients are required to establish before he can earn the said relief?.
- (iv) Has the applicant brought himself within the ambit of the said ingredients?

(v) What final orders are to be made herein in the disposal of this matter?

In response to own framed questions 1, the following are the general observations of the proceedings herein as so far undertaken.

(i) That the proceedings relate to the estate of a deceased person named as Othoro Alal.

(ii) That the said deceased person was the registered owner of land parcel number NORTH SAKWA / NYAWITA / 82.

(iii) That upon his death, one Samuel Odongo Ambasa took out a grant of representation to the said Estate describing himself as a son of the deceased.

(iv) That upon being issued with the said grant, and even before confirmation and with the help of personnel from Siaya Land Registry subdivided land parcel number NORTH SAKWA / NYAWITA / 82 into two parcels numbers 1062 and 1063.

(v) That he sold portion 1062 to the current applicant Vincent Ochung' Abondo while the other one was charged to a bank as security for a loan which loan was not repaid leading to the charged property being sold by way of Public Auction to the current applicant Vincent Ochung' Abondo.

(vi) That the Respondent to the current application moved to court to challenge the grant issued to Samuel Odongo Ambasa on the ground that the said Odongo had no right to succeed the deceased and the grant was therefore annulled.

(vii) That by the time the grant was annulled, the subdivided parcels had already been registered in the names of Vincent Ochung' Abondo.

(viii) That a fresh grant was ordered to be issued to the current Respondent one Lukas Okado Awadha but by that time the subject matter of the succession cause had become extinct.

(ix) That in advertently the said Lucas Okado Awadha filed fresh succession proceedings namely HCCC P & A 35 of 1994 seeking succession to land parcel number North Sakwa / Nyawita / 82 which had in fact become extinct before the filing and issuance and confirmation of the grant in the said proceedings.

(x) Upon encountering difficulty in restoring title number North Sakwa / Nyawita / 82 through succession cause No. 55 / 1994 for purposes of succession, the said Lucas embarked on the initiation of legal proceedings to recover the same.

(xi) One of the proceedings mentioned in number 10 above is Kisumu HCCC No. 199 of 1997 between Lucas Okado Awadha and Samuel Odongo Ambasa, Vincent Ochung' Abondo and

Land Registrar Siaya. The suit was dated 8th May 1997 and filed on 28th May 1997 and was dismissed on the 19th day of February 1998.

(xii) That on 26th day of January 2001, the said Lucas Okado Awadha presented an application seeking review of the dismissal order in his application remains pending hearing and determination to the present day.

(xiii) That the reliefs that had been sought by Lucas Okado Awadha in Kisumu HCCC No. 199 of 1997 (OS) were that the subdivision done on land parcel North Sakwa / Nyawita / 82 be cancelled as the same was done before the grant was confirmed and that the said grant given to Samuel Odongo Ambasa was revoked.

(b) That Samuel Ambasa be restrained from doing any other illegal act onto the said parcel until the administration to the estate of Othoro Alal is accomplished.

(c) Costs of this application to be granted to the applicant / plaintiff.

(xiv) The record reveals that the originating summons was dismissed by Wambiliangah J as he then was for failure to disclose a reasonable cause of action because apart from complaining about malpractices committed by one Samuel Odongo Ambasa and the land Registrar Siaya, there was no disclosure of the interest of Lucas Okado Awadha in the said property and how his rights had been infringed.

(xv) Thereafter the same Lucas Okado Awadha filed another suit HCCC No. 138 of 2004 also by way of originating summons in a summary form “orders that the applicant is entitled to the whole of land parcel known as North Sakwa / Nyawita / 1062 and 1063 which are part of original land parcel number North Sakwa / Nyawita / 82 which lands were fraudulently acquired and registered and subdivided by the 1st Respondent and the 2nd against the court orders made vide Kisumu High Court Succession Cause No. 18 of 1986 on the 4th day of March 1997.

(b) That the applicant be declared to be the only person entitled to the said title of lands in question vide Kisumu HCCC No. 35 of 1994, under which letters of administration in respect of the original land parcel No. North Sakwa / Nyawita / 82 was confirmed on 4th June 1998.

(c) That the honourable court be placed to declare that the 2nd respondent is holding the registration of the said land in question in trust for the applicant

(d) That the honourable court be pleased to declare that the applicant is entitled to possession and registration of the said lands by virtue of the fact that he successfully applied for letters of grant of Administration Intestate which was issued to him vide succession cause number 35 of 1996 and also vide objection and revocation of grant issued in succession cause number 78 of 1986.

(e) That the Honourable court do compel the 3rd respondent to transfer the registration and possession of land parcels number North Sakwa / Nyawita / 1062 and 1063 to the applicant.

(f) That in the alternative should the 2nd respondent refuse to transfer the said lands to the applicant, the Deputy Registrar of this court be empowered to sign the transfer documents the applicant

(xvi) That a perusal of the grounds in support of the originating summons were and are based on the historical back ground in HCCC Succession Cause No. 18 of 1986 and 35 of 1994 already set out herein.

(xvii) That the plaintiff in the originating summons appears to have anchored an interim application seeking interim injunctive relief. The copy of the injunctive application is missing from the file but a reply to it is contained in the file. It appears from the hand draft notes of the learned Judge Warsame J that the interim application was argued, a ruling reserved for delivery 17th March 2005, but it is not clear from the record whether this ruling was ever delivered.

(xviii) That on the 9th day of August 2010, the original applicant Lucas came back to succession cause number 18 of 1986 and filed an application by way of Chamber summons dated 9th day of August 2010, seeking orders that the court be pleased to order that all transactions that were done concerning the estate and mainly on land parcel No. 82 through the grant issued to Samwel Odongo Ambasa be annulled, that the District Land Registrar be ordered to cancel all the subdivisions done on the land parcel No. North Sakwa / Nyawita / 82 and it be given back to Lucas Okado Awadha the administrator of the estate and that costs be provided for.

(xix) That the application mentioned in number 18 above is what led to the judge then seized of the matter Karanja J ask for a brief summary of the application and then issued orders on the 17th day of November 2010 and extracted on the 24th day of November 2010, to the effect that “the lands Registrar Siaya surrender to the court, the subject grant with immediate effect and in any event not later than 3rd December 2010, that in default the said Registrar be summoned to appear in court to show cause why appropriate action should not be taken against him and that the matter be mentioned on 3rd December 2010 before the Deputy Registrar to confirm compliance”.

(xx) Apparently no compliance was made by the said land Registrar leading to the current grant holder Lucas Okado Awadha moving the court by way of a notice of motion dated 15th day of March 2011, and filed the same date seeking orders that the petitioner Samuel Odongo Ambasa either by himself, agents, servants or any person acting through his instructions be restrained by a temporary order of injunction from selling, transferring, surveying, sub-dividing, disposing or in any other way interfering with the land parcel number North Sakwa / Nyawita / 1062 and 1063 or any parcel thereof which is a resultant sub-division of land parcel number North Sakwa / Nyawita / 82, pending determination of the application as per prayer (b) and the suit as per prayer (c) and that costs be provided for.

(xxi) This court granted exparte restraint orders, in terms sought on the same 15th March 2011, under the wrong impression created upon the reading of the supporting papers that one Samuel Odongo Ambasa was still the Administrator of the estate of the deceased and that the applicant is in fact still the true current objector.

(xxii) That had the court had time to peruse the court file as it has now been done, it would have

discovered that in fact one Samuel Odongo Ambasa is no longer an administrator as he ceased being such in 1992 when the objection proceedings were concluded and allowed and the grant which had been granted to the said Ambasa had long been revoked.

(a) It would have discovered that in fact the applicant of the said interim relief was no longer an objector. He ceased being an objector upon the conclusion of the objection proceedings which were concluded in his favour.

(b) It would have discovered that the subject parcels of land sought to be protected were no longer in the name, care and control of one Samuel Odongo Ambasa as they had passed into the name, care control and custody of one Vincent Ochung' Abondo long before the revocation of the grant which had been issued to the said Ambasa.

(xxiii) By reason of what, has been stated in number 22 above, it is apparent that the interim orders granted on 15/3/2011 were addressed to a party who no longer has an interest in the proceedings having been ousted by the success of the objection proceeding on the one hand, and on the other hand that the recipient of these orders was in fact the correct party to receive them, but he has received them in a wrong capacity as an objector, when in fact he is not. He should have received them as the rightful administrator.

Thirdly, that it appears the said orders appear to have been granted in vain as the said Samuel Odongo Ambasa had divested himself of the said properties long before the conclusions of the objection proceedings, and was therefore in capable of dealing in any way with the said properties. Fourthly, that the title holder of the said properties was in fact one Vincent Ochung' Abondo.

(xxiv) That it is against the afore set out background information that the interested party Vincent Ochung Abondo presented the application dated 28th day of March 2011 and filed on the same date seeking an order that the court be pleased to enjoin the applicant herein Vincent Ochung' Abondo as an interested party in these proceedings more particularly touching on the application for orders of injunction in respect of land parcels numbers North Sakwa / Nyawita / 1062 and 1063 and that costs be provided for.

(xxv) That the reason for the said Vincent Ochung Abondo seeking to be enjoined in these proceedings is because he is the title holder of the afore said two parcels of land one of which he purchased from Samuel Odongo Ambaja while he was the holder of the grant to the revoked grant in P & A 18 of 1986 while the other one was purchased through an auction conducted by a financial institution after the said Samuel Odongo Ambasa who had used it as security defaulted on the loan repayment. Further, that the beneficiary of the interim orders has started harassing him with regard to his occupation of the same and he appears to be making plans to dispose them off to third parties.

(xxvi) That from the content of the grounds in the body of the application, and the supporting affidavit, it is apparent that the intending interested party has no other interest in the property save for protection of what he acquired outside the succession proceedings though from the historical background laid out tainted above, the acquisition is with transactions that took place in the succession proceedings.

(xxvii) That by reason of what has been assessed above in number 1 – 26 it is clear that the grant

holder herein as a successful beneficiary of the objection proceedings way back in 1992, has not enjoyed the fruits of that success. He has been in and out of court in search of justice and for this reason it is imperative on this court and for ends of justice to both parties, to provide directions on the way forward in order to bring to an end this long spanning litigation. This is also the reason why the Court has endeavoured to set out the historical background at length to enable parties understand the history of the matter and also the reasons for giving the discretions that the court intends to give herein.

Turning back to the rival arguments herein, and in response to own framed questions 2, 3 and 4, it is clear from the content of the application that the applicant Vincent Ochung' Abondo wants to join the proceedings as an interested party. The nature of the proceedings intended to be enjoined relates to an estates of a deceased persons governed by the provisions of the law of Succession Act Cap 160 laws of Kenya. It therefore follows that in order for the applicant to qualify to be a party to these proceedings, he must fall into the category of persons subject to the provisions of the said Act namely the preamble of the Act and Section 2 which specifies the application of the Act.

The preamble of the Act reads:-

“ An Act of parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons and for purposes connected there with and incidental thereto”

“Section 2 (1) Except as otherwise expressly provided in this Act , or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to all cases, of intestate or testamentary succession to the estate of the deceased person, dying after the commencement of this Act, and to the administration of the estates of these persons”.

This court has construed the above provisions and in its opinion, this court has the mandate to join persons to succession proceedings only if they are interested in the administration of the estate of deceased persons.

It is indeed undisputed that the two parcels of land that the applicant has an interest in were once part of an estates free property and can trace their origin to the estate property it is evident that as observed above in the assessment of general observations the applicant Lucas Okado Awadha sought protection for them as if they were still estate property a fact which has turned out not to be the correct position.

The applicant seeks to intervene not as a beneficiary to the estate but as a purchaser in dependent of estate claims, in other words he intends to assert civil claims.

This court is alive to the provisions of Section 47 of the law of succession Act Cap 160 Laws of Kenya which reads:- **“Section 47 the high court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decree and make such orders therein as may be expedient**”

This court is also a live to the provisions of Rule 73 of the Probate and Administration Rules which reads:- **“ Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.**

These two provisions appear to be giving the court a wide mandate to entertain any application presented in a succession proceeding and award any relief sought. But like any other litigation that this court has judicial notice of the interpretation of a Section of a piece of legislation, or rule made there under cannot be construed independently of the preamble and the application of the legislation when so construed, it

means that any application and relief sought by a party for purposes other than succession purposes falls outside the mandate of this court when seized of succession proceedings. This being the case, it means that the protective orders issued by this court on 15/3/2011 were issued in error. Likewise the move by the current applicant to join these proceedings in the manner sought, has also been sought in error. It is therefore necessary for this court to provide necessary direction on the way forward in order to bring this long standing litigation herein to an end.

The directions are as follows:-

- (i) It appears that Lucas Okado Awadha has failed to reap the fruits of the success of his objection proceedings awarded to him way back in 1992 because the grant to him which had previously issued to one Samuel Odongo Ambasa which previously had been taken to the land Registrar Siaya, to effect subdivision of land parcel number North Sakwa / Nyawita / 82 has never been returned to court for cancellation as previously ordered to avoid any further hardship to Lucas a Okado Awadha and other parties interested in the said property, this court on its own motion and in the exercise of its inherent jurisdiction donated by Rule 73 of the Probate and administration Rules makes order that the said grant is ordered to be treated as having been cancelled and the copies traced on the record duly endorsed with the words “cancelled”.**
- (ii) A fresh grant is ordered to be issued in the names of Lucas Okado Awadha bearing the date of revocation of the grant which had been issued to Samwel Odongo Ambasa following the success of the delivery of the ruling on the objection proceeding.**
- (iii) The said Lucas Okado Awadha is advised to withdraw the application seeking to revive suit number HCCC No. 199 of 1997 which was dismissed due to failure to disclose a reasonable action because it will not serve any useful purposes to him. The withdrawal will mark the said proceedings spent.**
- (iv) Upon withdrawal of the application for review and setting aside of the dismissal order in HCCC 199 of 1997, the said Lucas Awadha to proceed to cause the interim application in HCCC No. 138 of 2004 to be placed on the file and have the same listed for hearing inter partes on priority basis. The end result on these interim proceedings in HCCC 138 of 2004 will be the same as the said Lucas Okado Awadha had also sought interim protective orders to protect the two subject plots from finding their way into the hands of 3rd parties other than parties participating in the proceedings. This proceeding will also be ideal because the intended interested party herein as well as Samuel Odongo Ambasa are also parties in the said proceedings.**
- (v) The grant issued to Lucas Okado Awadha in HCC P & A 35 of 1994 should be surrendered for cancellation because as at the time the same was issued the subject matter of succession therein namely North Sakwa / Nyawita / 82 did not exist and so the orders made therein both for the issuance of the initial grant and its confirmation are null and void. The cancellation to be effected in the same file.**
- (vi) For the reasons given in the assessment the orders granted by this court on 15/3/2011 were granted in error as they were directed to Samuel Odongo Ambasa who is no longer a party in succession cause No. 18 of 1986 having been removed by the successful objection by Lucas Okado Awadha.**

(vii) They were also granted in error on the assumption that the two subject plots namely North Sakwa / Nyawita /1062 and 1063 were estate property as at that time but it has transpired that they were not as title in them had already passed on to the intended interested party.

(viii) The application presented by Vincent Ochung Abondo seeking to be enjoined in these proceedings as an interested party is also invalid for the reason that as a person not interested in the estate of Othoro Alal as a direct beneficiary to the said estate he cannot present an application herein in the said succession proceedings.

(ii) The succession proceedings can only relate to administrators and beneficiaries of whatever category and not interested parties.

(xi) To avoid a situation of stalemate or vacuum in relation to the reliefs in favour of both sides and for ends of justice to be met to both sides the court on its own motions and in invocation of its inherent jurisdiction by Rule 73 of the Probate and Administration Rules makes an order to the effect that both Lucas Okado Awadha and Vincent Ochung Abondo should not do any thing either to alter the position physically on the ground or change of ownership by way of alteration to title documents in the condition in which they are now both on the ground and title wise for 60 days from this date of the reading of the Ruling.

(xii) The sixty (60) days allowed in number 9 above is sufficient to enable parties regularize their positions in HCCC No. 138 of 2004 and thereafter proceed therein according to law.

(xiii) In view of the history of the matter all files relating to these proceedings are ordered to be kept in the strong room.

(xiv) For the same reason in number 13 above the proceedings to be processed on priority basis.

Dated, signed and delivered at Kisumu this 8th day of July 2011.

R. N. NAMBUYE

JUDGE

RNN/aa0