



REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 905 OF 2007
IN THE MATTER OF THE ESTATE OF THE JUMA MASINDE ----DECEASED
AND
MARY NAFULA JUMA-----PETITIONER

R U L I N G

The applicant is the administrator to the estate of the late **JUMA MASINDE**.

Although the deceased, Juma Masinde, died on 15th August 1982, it was not until 28th May 2008 that this court issued a grant of letters of administration to the applicant. The delay in the issue of succession lay squarely at the door of the family of the deceased, because they did not institute the succession proceedings until 2nd November 2007.

Having been issued with the grant, the applicant went about the process of gathering the estate of the deceased. It is her case that one of the properties that ought to comprise a part of the estate was **L.R. No. BUNYALA/SIDIKHO/535**. However, when she conducted an official search against the title, the applicant found that the title was closed on either 8th December 1986 or on 31st August 1987. Those two dates are cited on two different certificates of official search, which were both issued by the Land Registrar Kakamega.

Following the closure of the title to parcel No. 535, the property was sub divided into two portions, being parcels numbered 948 and 949, respectively.

In respect to the two resultant sub-divisions, the respondent, **WILSON WAMALWA**, is registered as the Administrator to the estate of **JUMA MASINDE**.

As far as the applicant was concerned, Wilson Wamalwa is not the administrator to the estate of Juma Masinde.

To my mind, on a prima facie basis, I hold that there cannot be two administrators, who are appointed independently from each other, and in different succession causes, arising from the demise of one deceased person. And if there should happen to be such a scenario, the court is obliged to put an end to it, as soon as the court becomes aware of the same.

In this case, the respondent was duly served, but he did not file any replying affidavit. Consequently, I find that the deposition by the applicant is uncontroverted. That would mean that before the applicant

instituted this succession cause, she obtained the written consent of all the other beneficiaries to the estate of the late Juma Masinde. One of the two people who gave their consent is the respondent, Wilson Wamalwa Juma.

The said consent is dated 2nd November 2007.

In my considered opinion, if the respondent had already obtained a grant in respect to the estate of the late Juma Masinde, he would not have given his consent to the applicant herein to apply for another grant.

The failure by the respondent to disclose to this court how and where he obtained the grant, which enabled him to be registered against the title to parcel No. 535, as the administrator of the estate to the late Juma Masinde, can only mean that he either has no such grant or that the alleged grant was obtained irregularly.

As the respondent is said to be using the registration against the titles to parcels Nos. 948 and 949 to enter into a contract with the Mumias Sugar Company Limited; and as he is then utilizing the proceeds realized from the sugar cane grown on those parcels of land, the estate of the late Juma Masinde is being deprived of the said proceeds.

It is my considered view that if the respondent is not restrained from continuing to derive benefit from the said parcels of land, the estate of the late Juma Masinde will suffer irreparable loss and damage.

In order to preserve the subject matter of the succession cause herein, it is hereby ordered that the registration of the following two parcels be cancelled forthwith.

a) **L.R. No. BUNYALA/SIDIKHO/949**

b) **L.R. NO. BUNYALA/SIDIKHO/948**

Following the cancellation and nullification of those two parcels, the

land comprised therein shall revert to its earlier title, being **L.R. No. BUNYALA/SIDIKHO/535**, which shall be registered in the names of JUMA MASINDE.

However, I decline to order that the land be registered, by transmission, to the applicant. In my considered view, transmission of the property of a deceased person ought to only take place after the confirmation of a grant. It is at that stage that all the beneficiaries should be able to transfer into their respective names, such portions of land as are being transmitted to them, through lawful inheritance.

The costs of the application are awarded to the applicant, and are to be paid by the respondent.

Dated, Signed and Delivered at Kakamega, this 30th day of April, 2009

FRED A. OCHIENG

J U D G E