



**SATISH RAJPAL ..... PLAINTIFF**

**VERSUS**

**MOHAMMED ALI MAMUJI & 2 OTHERS.....DEFENDANTS**

**RULING**

The application prosecuted on the 15<sup>th</sup> October 2009 is the one dated 26<sup>th</sup> August 2005 seeking the main order that the parcel of land known as **KISUMU /MUN/BLOCK/6/22** situated along **OTUOMA STREET KISUMU** be registered in the name of the applicant, Satish Mohanlal Rajpal.

The grounds in support of the application are two fold viz that the applicant is the administrator of the estate of Satyavati Mohanlal Rajpal (deceased) and especially the material parcel of land and that the respondents consented to all their shares in the property being transferred to the applicant.

In the supporting affidavit dated 9<sup>th</sup> August 2005, it is established by the annexed Will (exhibit marked “SR1”) and the certificate of grant dated 18<sup>th</sup> March 1993 ( exhibit marked “SR2) that the applicant is the administrator of the estate of the late Satyavati Mohanlal Rajpal

However, the alleged registration of the material property in the names of the applicant and the respondent is not established whatsoever. The certificate of lease alluded to and purportedly marked exhibit “SMR 3” is not exhibited. It is non-existent.

Also, the alleged purchase by the applicant of the respondents shares in the property is not established by any documentary evidence nor is the alleged transfer of the respondents interest in the property to the applicant.

The supplementary affidavit dated 1<sup>st</sup> February 2007 indicates that the respondents have since relinquished their respective interest in the property but this is not established by any evidence. The averment in the same affidavit indicating that the share of the deceased in the property should be registered in the applicant’s name as the executor of the deceased’s estate is rather contradictory to the earlier averment that the property was registered in the names of the applicant and the respondents and that the applicant purchased the respondents shares in the property.

It is therefore apparent that the grounds in support of the application are unsustainable.

Be that as it may, let it be pointed out that there has been an abuse of the court process in the way the application was prosecuted in that on the 12<sup>th</sup> July 2006 directions were given by the court to the effect that the matter proceeds by way of “**viva – voce**” evidence yet the applicant proceeded by way of affidavit evidence.

Again, on the 10<sup>th</sup> December 2007, the court declined to grant the orders sought on grounds that there were unsupported facts in the supporting affidavit. The applicant was granted leave to file a further affidavit which was indeed filed but did not add any value to the earlier one.

On the 28<sup>th</sup> January 2009, the court made it very clear, that further directions had to be given prior to the hearing of the application but the applicant still proceeded ex-parte on the 15<sup>th</sup> October 2009.

All the foregoing demonstrate gross abuse of the court process by the applicant.

All in all, the application is without merit and an abuse of the court process. It must and is hereby dismissed accordingly.

**Dated, signed and delivered at Kisumu this 27<sup>th</sup> day of October 2009.**

**J. R. KARANJA**

**JUDGE**

JRK/aao