



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

Succession Cause 265 of 2006

IN THE MATTER OF THE ESTATE OF KOLA NYAKINDA.....DECEASED

AND

1. JACOB HOMES DALMAS OSETO).....CITORS

2.

JOHN NYANJWA OUMA)

-VERSUS-

HARRISON ASETA KOLA.....CITEE

1. ACTON OTIENO KOLA).....APPLICANTS

2.

RICHARD ABERA KOLA)

RULING

On 23/5/2007 the Senior Resident Magistrate Homabay issued letters of administration in the estate of Kola Nyakinda to the respondent Harrison Aseto Kola. On 1/7/2007 the applicants Jacton Otieno Kola and Richard Abera Kola filed summons for Revocation of the grant claiming they were brothers to the respondent and sons to the deceased who were entitled to be included in the administration of the estate. On 24/11/2008 the parties appeared before my brother Justice Musinga and agreed that the applicants be included in the letters above as co-administrators. On 18/6/2009 the applicants filed the present application by way of summons under *order 39 rules 12A and 9 of the Civil Procedure Rules* and *sections 3A and 63 (c) of the Civil Procedure Act* seeking a temporary injunction. In the Supporting Affidavit by 2 nd applicant he claimed that the respondent is cultivating parcels *Karachuonyo/Kamenya/1498* and *Kanyamwa/Kabonyo/Kwandika/223*, which are subject of the administration, without their consent. The second claim was that the respondent was selling the lands with a view to defeating the pending cause. The injunction was sought to restrain the respondent by himself, agents, servants and /or anyone claiming under

him from reentering , trespassing onto, clearing the bush, cultivating with a mind of planting crops, or interfering with/or in any other manner whatsoever dealing with the suit lands which is under the process of succession. The respondent has raised a Preliminary Objection to the application. One issue raised is that the application is fatally defective . This is because it was brought by the two applicants one whom swore a Supporting Affidavit without the authority of the other. I have looked at the affidavit. It does not state it is sworn on behalf of the 1st applicant or with his authority. No authority was obtained from the 1st applicant. I find the affidavit is incurably defective. Consequently, the application is struck out with costs.

It is not necessary to deal with the other issues raised in the objection.

Dated, signed and delivered at Kisii this 10th day of November, 2009.

A.O.MUCHELULE

JUDGE

10/11/2009

Before A.O.Muchelule-J

Mongare court clerk

Mr. Masese for Mr. Sagwe for applicant

COURT; Ruling in open court

A.O.MUCHELULE

JUDGE

10/11/2009