



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA**

**Succession Cause 48 of 1996**

**IN THE MATTER OF THE ESTATE OF FRANCIS OKANGA NYAPELA**

**AND**

**ESAU NYAPELA OKANGA..... PETITIONER**

**V E R S U S**

**SELLA M. OKANGA**

**DISHON S. OYOYI.....OBJECTORS/RESPONDENTS**

**R U L I N G**

The Petitioner, Esau Nyapela Okanga, made an application on 23.9.04 by way of a chamber summons dated 20.9.2004 seeking temporary injunction to restrain the Respondents, Sella M. Okanga and the third party, Dishon S. Oyoyi, from selling, transferring, cultivating, constructing, fencing or wasting or interfering with land parcel No.E.Bunyore/Ebusamia/498 pending the hearing and determination of the objection proceedings instituted by the Respondent.

The application was made on the grounds, inter alia, that the Respondent/Objector had secretly “*given out the suit land to the third party and that the third party and the Respondent/Objector were intermeddling in the estate*”. In the affidavit sworn on 20.9.2004 by the Petitioner in support of the application, the latter averred that the third party, Dishon S. Oyoyi, was registered on 20.6.2002 as the proprietor of the suit land when the objection proceedings were pending.

The Respondent/Objector who was served with the application for injunction did not appear for the hearing, nor did the third party who was also served and neither filed any replying affidavits to oppose the application.

I have perused the application and its supporting affidavit and have duly considered the submissions made by Mr. Kaburi, learned counsel for the Applicant. I am satisfied that in this cause the estate of the deceased, Francis Okang’a Nyapela, comprised four parcels of land namely;

***E/BUNYORE/EBUSAMIA/701***

***E/BUNYORE/EBUSAMIA/987***

***E/BUNYORE/EBUSAMIA/2233***

***E/BUNYORE/EBUSAMIA/498***

On 10.4.96, a grant of Letters of Administration was made to the Petitioner which was confirmed on 29<sup>th</sup> May, 1996. Up to now, the objection proceedings filed by the Respondent/Objector have not been heard. During the pendency of the objection proceedings, land title No. E/BUNYORE/EBUSAMIA/498 was transferred to the said 3<sup>rd</sup> party, Dishon S. Oyoyi on 20.6.2002. If the Petitioner as the holder of the Letters of Administration did not transfer it to the third party, who did? It is a criminal offence under the provisions of section 155 (1) of the Registered Land Act, Chapter 300 of the Laws of Kenya for any person to fraudulently procure any registration in any register.

As the application is not contested, and as the averments in the supporting affidavit of the Applicant/Petitioner are therefore not controverted, and as they appear to be true, I am satisfied that the Applicant/Petitioner has made out a case for the grant of the orders sought. Under section 47 of the Law of Succession Act (Cap.160), this court has jurisdiction to make such orders as may be expedient. Indeed the court has inherent power to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court (see Rule 73 of The Probate and Administration Rules).

Accordingly, I allow the application dated 20.9.2004 and grant prayers 5 by ordering that, the registration of the Third Party, DISHON OYOYI as the proprietor of the parcel of land No. E/BUNYORE/EBUSAMIA/498 shall be cancelled forthwith. I also order that the Respondent/Objector and the said Dishon Oyoyi be and are hereby restrained from interfering in any manner whatsoever with the said land parcel E/BUNYORE/EBUSAMIA/498 or with the title thereof. The Respondent and the 3<sup>rd</sup> Party shall pay the costs of the application.

I direct that this Ruling and the application (dated 20/9/04) be furnished on the DCIO Kakamega who shall investigate possible commission of an offence under section 155 (1) of the Registered Land Act, Cap.300 with regard to the transfer of land title No. E/BUNYORE/EBUSAMIA/498 on 20.6.2002.

***Dated at Kakamega this 8<sup>th</sup> day of July 2005.***

**G. B. M. KARIUKI**

**J U D G E**