

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Succession Cause 121 of 1996

**IN THE MATTER OF THE ESTATE OF WILLIAM ASWANI ATSALI
(DECEASED)**

AND

PIRISILA OMUNGALA NDUNYI

**GEORGE OKOTH ASWANI
PLAINTIFFS**

V E R S U S

**GABRIEL OCHOLI MUKOKO
DEFENDANT**

R U L I N G

This Succession Cause No.121 of 1996 concerns the estate of the late William Aswani Atsali who died on 8.6.95. Grant of Letters of Administration was made by this court in this cause on 1st July, 1996 to Prisila Omungala Ndunyi, the daughter of the deceased. A certificate of official search dated 5.10.95 filed with the application for the Grant of Letters of Administration showed that the parcel of land known as MARAMA/SHIRAHA/449 measuring 5.5 acres was registered in the name of Aswani Atsali, the deceased although his Christian name of William was omitted. The said grant was confirmed on 29.01.97 but on 25.5.98 both the Grant of Letters of Administration and the confirmed Grant with all the consequential orders were cancelled by this court. But by that date (25.05.98), the Petitioner had already caused her name to be registered (on 23.7.96) in the title to land No. Marama/Shiraha/449 as the Administrator of the estate of the late Aswani Atsali in the place of the latter and on 12.2.97 Prisila Omungala Ndunyi had transferred the title of the said land to one Gabriel Ocholi Mukoko in consideration of Shs.240,000/=. The latter became the registered proprietor on 24.10.97 when title deed was also issued to him. Consequent upon the cancellation of the said Grants on 25.5.98, the court order was registered on 1.2.99 with the effect that the registration of Prisila Omungala Ndunyi and the transfer by her to Gabriel Ocholi Mukoko and the latter's registration as proprietor on 24.10.97 were cancelled with the result that the said land reverted to the deceased Aswani Atsali.

George Okoti Aswani is the brother of Prisila Omungala Ndunyi. In 1998, he applied in H.C. Succession Cause No.179 of 1998 for Grant of Letters of Administration in respect of the estate of the deceased, William Aswani Atsali, which was made to him on 8.7.98. The Grant was issued on 19.4.99. It was confirmed on 24.6.99. The estate reflected two properties to wit, land title No. Marama/Shiraha/449 and Marama/Shiraha/989. George Okoti Aswani had indicated his name in the application as the only beneficiary of and heir to the deceased's estate.

On 8.7.2003, the Honourable Mr. Justice Mutitu consolidated H.C. Succession Cause No.179/98 with H.C. Succession Cause No.121 of 1996 on the ground that both related to the same estate.

On dated 28.5.98, Gabriel Ocholi Mukoko filed an application wrongly by use of a Notice of Motion in the Succession Cause No.121 of 1996 seeking to set aside the orders dated 25.5.98 cancelling the original and confirmed Grant to Prisila Omungala Ndunyi and the transfer to and registration as proprietor of land parcel No. Marama/Shiraha/499 of Gabriel Ocholi Mukoko citing section 93 of the Law of Succession Act as authority for the setting aside orders sought.

When the application came up for hearing on 11.4.2005, Prisila Ndunyi and George Okoth Aswani whose advocates then on record were Messrs Lucy Nanzushi & Company did not attend. They had been served on 15.9.2004 (the hearing date having been fixed ex-parte on 4.8.2004) by Laban Akula Anziya, Advocate, in their chambers in Bungoma with a hearing Notice which was signed and stamped. An affidavit to this effect was sworn on 11.4.04 and filed in court on 11.4.05 by Advocate Laban Akula Anziya. There was no opposition to the application. The transfer of land parcel No. Marama/Shiraha/499 was made by a person to whom representation had been granted in Succession Cause No.121 of 1996. The transfer was to a person who was a purchaser. In the circumstances, I am inclined to allow the application. I hereby do so. I grant prayer No.2 of the application but make no order as to costs.

Dated at Kakamega this 3rd day of November, 2005.

G. B. M. KARIUKI

J U D G E