



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**SUCCESSION CAUSE NO. 800 OF 2014**

**IN THE MATTER OF THE ESTATE OF**

**THE LATE MAGWARA GWADA (DECEASED)**

**BETWEEN**

**SALINA AKEYO MOLA.....APPLICANT**

**VERSUS**

**CORNELIA ACHIENG GUNDI.....1<sup>ST</sup> RESPONDENT**

**FREDRICK OUMA OWUOR.....2<sup>ND</sup> RESPONDENT**

**AND**

**LUKE OMULO.....1<sup>ST</sup> INTERESTED PARTY**

**JOHN ADOYO OTIENO.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

Before me is an application dated 24<sup>th</sup> February 2021. It is an application which was brought by the Interested Parties, **LUKE OMULO** and **JOHN ADOYO OTIENO**.

1. The application was for an injunction to restrain the 2<sup>nd</sup> Petitioner, **FREDRICK OUMA OWUOR GUNDI** from forcefully evicting the Interested Parties; and also from ploughing or in any other manner interfering with the Applicants' peaceful occupation and/or utilization of the portion of land which the said Applicants currently occupy or utilize, within **L.R. NO. KISUMU/BORDER/2444**.

2. The Applicants ask that the interim injunction, if issued, should remain in force until the final distribution of the estate of the late **MAGWAR GWADA**.

3. It was the contention of the Applicants that they had purchased a portion of the suit property from **SALINA AKEYO MOLA**.

4. By his replying affidavit, the Respondent, **FREDRICK OUMA OWUOR GUNDI** noted as follows;

***“5. THAT as far as I know and believe, this Honourable Court awarded the confirmation of grant to Salina Akeyo Mola and ordered that the parcel of land Kisumu/Border/2444 be shared out equally between Cornelia Achieng Gondi, Fredrick Ouma Owuor and Salina Akeyo Osogo.”***

5. The Respondents further deponed that they had not, in any way prevented Salina Akeyo Mola from acquiring her share of the property.

6. According to the Respondents, they appreciate that if they were to disobey any Orders issued by the Court, they would be in contempt of the Court.

7. As far as they were concerned, the beneficiaries ought to be allowed to proceed with transmission of their respective properties to their own names.
8. The Respondents perceive this application as an attempt by the Applicants to frustrate the process of succession.
9. When canvassing their response to the application, the Respondents conceded that although the Court had ordered the parties to seek the assistance of the Assistant County Commissioner, Nyando, to reach an amicable solution, the parties had not yet held any meeting with the said Assistant County Commissioner.
10. Considering that the Respondents readily acknowledge that **SALINA AKEYO OSOGO** is an elderly lady, this Court holds the view that it was therefore incumbent upon the Respondents to try and facilitate the meetings which are intended to lead to the actual distribution of the land.
11. In my considered view, neither the Applicants nor Salina stand to gain any benefit from the continued delay in the distribution of the estate.
12. The Respondents will also not gain any benefit from the delay in finalizing the process of actual distribution.
13. And whilst the Respondents submitted that they had not prevented Salina from acquiring her share of the property, the reality is that such acquisition cannot be attained independently from the process of the distribution of the whole estate.
14. Although the Respondents have pointed out that prior to distribution of the estate, Salina had no legal authority to alienate any part of the estate, the Court notes that during confirmation of the grant, Majanja J. expressly ordered that each of the 3 beneficiaries was entitled to an equal share of the property.
15. Therefore, provided that Salina did not purport to alienate more than her share of the property, I find that the administrators ought to take steps to transmit to the Applicants, the portion which they had purchased.
16. I commend the Respondents for making the following submission;

***“19. If the purported buyers herein, the interested parties, are claiming interest from part of the estate, then after ratification of the said agreement by one SALINA AKEYO MOLA, then they should only acquire what they bought from her share, and not the share of other beneficiaries .....*”**
17. In my considered view, there is no bar, in law, to Salina transferring to the Applicants, the portion of land which she sold to them, provided that such transmission does not have any negative impact upon the shares of the other 2 beneficiaries.
18. I also find that the process of distribution, in accordance with the Certificate of Confirmation of Grant is not a new or additional claim pertaining to ownership.
19. The application before me does not constitute a new suit, as alluded to by the Respondents. The application simply asks that until distribution was conducted, so as to give effect to the terms of the Certificate of Confirmation of Grant, the Applicants should not be removed forcibly, from land which they had not only acquired from Salina, but which they were in possession of.
20. I appreciate that Majanja J. had accorded the parties an opportunity to negotiate a settlement, with the assistance of the Assistant County Commissioner, Nyando. That exercise ought to have taken place within 6 months, from 19th September 2017.
21. As the Respondents correctly submitted, the period had lapsed long ago. Therefore, the parties need not seek the assistance of the Assistant County Commissioner.
22. But the lapse of the period of 6 months did not result in actual distribution of the estate. Therefore, all the parties must take steps to give effect to the Certificate of Confirmation of Grant.
23. In the meantime, I reiterate what Majanja J. stated in the Ruling dated 19<sup>th</sup> September 2017;

*“For the avoidance of doubt, this ruling does not authorize the forcible eviction of the interested parties from the land they occupy on the deceased’s estate.”*

24. Before the actual distribution is carried out, the Respondents would not have had any specific portions of the estate transmitted to them. Therefore, they would have no legal basis for evicting the Applicants from the part which the said Applicants are occupying or utilizing.

25. In effect, the Respondents are restrained from evicting the Applicants from the portion of land upon which the Applicants are either occupying or are utilizing: this order shall remain in force until the process of actual distribution of the estate is concluded.

26. In order to ensure finality of the process of distribution, the Court will give further Directions herein immediately after hearing from the parties, after the delivery of this Ruling.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 7<sup>TH</sup> DAY OF FEBRUARY 2022**

**FRED A. OCHIENG**

**JUDGE**