

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 437 "B" OF 2007

IN THE MATTER OF THE ESTATE OF CHARLES MANYASI (DECEASED)

RULING

1. Let me start by saying that the cover of this cause is misleading. It indicates it to be a matter in the estate of Kimeta Emolwa, deceased; while the papers inside relate to the estate of one Charles Manyasi.
2. The application earmarked for hearing is the summons dated 22nd May 2019. It seeks revocation of the confirmed grant herein, stay of proceedings in Butali MCL&ELC No. 185 of 2018, and cancellation of the registration of South Kabras/Chemuche/xxxx. It is brought at the behest of David Kimwei. His case is that there was an application in Butali MCL&ELC No. 185 of 2018, which sought his eviction from South Kabras/Chemuche/xxxx, based on orders made in this cause. He argues that the deceased person, in this cause, was not the registered proprietor of South Kabras/Chemuche/xxxx, but of South Kabras/Chemuche/xxxx, and, therefore, South Kabras/Chemuche/xxxx was never part of the estate of the deceased herein. According to him, South Kabras/Chemuche/xxxx, was registered in the name of Kimata Emolwa, who died in 1997. He submits that the deceased herein died in 1996. He fears that his family is likely to be wrongly evicted from their land, being South Kabras/Chemuche/xxxx.
3. The response to the application takes the form of grounds of opposition. The court is said to lack jurisdiction over the matter of cancelation of title, that the issues raised properly belong to the proceedings in Butali MCL&ELC No. 185 of 2018, the application was challenging registration of the respondents as proprietors of South Kabras/Chemuche/xxxx, and the applicants were not related to the deceased herein.
4. There is also an affidavit sworn by the administrator herein, Gideon Lukamasia Manyasi. He gives a background to the matter. He says that the deceased herein bought South Kabras/Chemuche/xxxx from the family of Kituyi, but he later discovered that the same had been subdivided into South Kabras/Chemuche/xxxx and xxxx, and registered in the name of the late Kimata Emolwa, the father of the applicant herein. He died before he could have the matter sorted out, so the administrator and his late mother, Sarah Ayuma Musee, pursued it vide a tribunal case, that they filed in Kabras Land Disputes Tribunal. The tribunal awarded both parcels of land to the family of the deceased herein. That award was adopted as an order of the court, after which the land was placed before this court, in this cause, for distribution.
5. The application was canvassed by way of written submissions, which I have read through and noted the arguments made.
6. I agree that the jurisdiction in relation to determining ownership of land lies with the Environment and Land Court. To assess whether I should order stay as sought I may need to look at the documents lodged herein. I have not managed to see a copy of the title deed nor green card for South Kabras/Chemuche/xxxx, but I have seen the proceedings of the Kabras Division Land Disputes Tribunal. The finding of that tribunal, of 11th April 2007, in a dispute which pitted the family of the deceased herein, the late Charles Manyasi, and that of the late Kimata Emolwa, was that the late Charles Manyasi had bought South Kabras/Chemuche/xxxx, later subdivided into South Kabras/Chemuche/xxxx and xxxx, from the Kituyi family, and that the same belonged to the family of the said Charles Manyasi. The tribunal that the same be shared out between Sarah Ayuma Musee, Absalom Manyasi, Joab Manyasi, Gedion Manyasi, Charles Manyasi and 2 unnamed minors. The widow was advised to file a succession cause in the estate of the late Charles Manyasi. The said award of the tribunal was made an order of the court in Kakamega CMC Misc. Ward No. 78 of 2007. A formal order is on record, dated 23rd April 2008. These proceedings were initiated, and the two assets were devolved upon the family of the late Charles Manyasi, at confirmation and a transmission happened after the certificate of confirmation of grant was lodged on 12th April 2012, and a title deed was issued on 17th May 2012, in the names of members of the family of the late Charles Manyasi, in terms of the confirmation orders. A copy of the title deed for South Kabras/Chemuche/xxxx, dated 29th March 1993, shows the name of the late Kimata Emolwa as proprietor, but that was before the events in Kabras Division Land Disputes Tribunal and Kakamega CMC Misc. Ward No. 78 of 2007, and the succession proceedings herein. Overall, the property appears to be properly in the hands of the family of the late Charles Manyasi, and I am not persuaded that they cannot seek eviction founded on the orders made in Kakamega CMC Misc. Ward No. 78 of 2007.
7. Should I allow cancellation of the title in South Kabras/Chemuche/xxxx, issued subsequent to the confirmation of the grant? I reiterate what I have stated above. The tribunal awarded the land to the family of the deceased herein, which award was adapted as an order of the court in Kakamega CMC Misc. Ward No. 78 of 2007. The succession proceedings were founded on the orders in Kakamega CMC Misc. Ward No. 78 of 2007, and so long as the said orders stand, ordering the cancellation sought will be of no effect, for it cannot reverse the decisions of Kabras Division Land Disputes Tribunal and in Kakamega CMC Misc. Ward No. 78 of 2007.
8. Should I revoke the grant herein? The grounds for revocation of a grant are notorious. They are set out clearly in section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. It has not been demonstrated that the grant was obtained through a defective process, or through concealment of matter from the court, or that there was maladministration of the estate, or that the grant herein has become useless and inoperative. I have, myself, not seen any material that would allow me to revoke the grant *suo moto*. Revocation of the grant is not available, in the circumstances.
9. Consequently, there is no merit in the summons dated 22nd May 2019, and I hereby dismiss the same. I shall award costs to the estate, as the family of the late Kimata Emolwa was party to the proceedings before the Kabras Division Land Disputes Tribunal, and has been well aware of the outcome in those proceedings relating to the pieces of land in dispute. Any party aggrieved, by the decision that I have arrived at

here above, has leave of twenty-eight (28) days, to move the Court of Appeal, appropriately.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18th DAY OF June 2021

W. MUSYOKA

JUDGE