



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 554 OF 2013**

**IN THE MATTER OF THE ESTATE OF PETER MUKULO CHESOLI (DECEASED)**

**NASHON CHESOLI MUKULO.....APPLICANT**

**VERSUS**

**INDANGASI PATRICK MUKULO.....1<sup>ST</sup> RESPONDENT**

**JOSEPH WECHULI MUKULO.....2<sup>ND</sup> RESPONDENT**

**FRANCIS TUYA MUKULO.....3<sup>RD</sup> RESPONDENT**

**TIMOTHY SHAYO MUKULO.....4<sup>TH</sup> RESPONDENT**

**EDWARD AKAYA MUKULO.....5<sup>TH</sup> RESPONDENT**

**BENARD MABIA MUKULO.....6<sup>TH</sup> RESPONDENT**

**JULIANA WANJAYA MUKULO.....7<sup>TH</sup> RESPONDENT**

**PASILITA MUKULO.....8<sup>TH</sup> RESPONDENT**

**MARY MUKULO.....9<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant has filed an application dated 5<sup>th</sup> July, 2018 seeking for orders that:-

*(1) This Honourable court be pleased to grant orders of injunction restraining the respondents by themselves, their agents, servants and/or anybody acting for and on their behalf from interfering, trespassing, encroaching and/or otherwise with a portion of land measuring approximately 1.85 acres forming part of land parcel better known as KABRAS/LUKUME/287 as awarded to the applicant vide certificate of confirmation of a grant dated 14<sup>th</sup> July, 2015.*

*(2) This Honourable court be pleased to issue an order directing the Kakamega County Land Surveyor to visit parcel of land better known as KABRAS/LUKUME/287 and demarcate it in accordance with certificate of confirmation of a grant dated 14<sup>th</sup> day of July, 2015.*

*(3) This Honourable court be pleased to compel the respondent to account for 2500 trees valued at ksh. 2,000,000/= and one head of cattle valued at Ksh. 15,000/=, 1 oxen yolk, plough and a bicycle which formed part of the deceased's estate.*

*(4) This Honourable court be pleased to empower the Deputy Registrar to sign all relevant documents to facilitate the smooth administration of the estate of the deceased.*

*(5) The OCS Kakamega Police Station to oversee the exercise in terms of order (2) herein above.*

*(6) This Honourable court be pleased to compel the respondents jointly and severally to equally share the costs of the surveyor, stamp duty and other related costs to facilitate the administration of the estate.*

*(7) Costs of this application be provided for.*

2. The application is premised on the grounds on the face of the application and supported by the affidavit of the applicant. The respondents were served with the application but did not file a response to the application neither did they turn up during the hearing of the application.
3. The appellant depones in his affidavit that a grant of letters of administration in respect to the estate of the deceased in this succession cause was confirmed by this court on the 14<sup>th</sup> July, 2015 wherein the estate was shared equally between him and the respondents. That since then the respondents have thwarted efforts by the applicant to have the land surveyed in accordance with the certificate of confirmation of the said grant. That they have trespassed, encroached and or obstructed the applicant from occupying and enjoying quiet and peaceful use of land measuring 1.85 acres and or thereabouts awarded to the applicant. That they have threatened to physically harm the applicant if he attempts to occupy the portion of land. That he has hence been denied his right to occupy and or own the portion of land. That it is in the interest of justice that the prayers sought be granted.
4. In prayer 1 the applicant is seeking for injunctive orders to restrain the respondents from trespassing into his parcel of land measuring 1.85 acres. The applicant concedes that the land has not been surveyed and demarcated to the beneficiaries. How then does he know the boundaries to his parcel of land so that the respondents are restrained from trespassing into the land? It will be difficult to enforce such orders where boundaries have not been set.
5. In prayer 3 the applicant is seeking that the respondent accounts for some property that formed part of the estate of the deceased. There are 9 respondents in the application two of whom are co-administrators of the estate with the applicant. The applicant does not indicate in his application to whom the prayer for account is directed at. Some of the respondents are not administrators of the estate. They cannot be asked to account when they are not administrators.
6. Prayer 2 seeks that the court directs the Kakamega County Surveyor to visit and survey the subject land and demarcate it in accordance with the certificate of confirmed grant. Prayer 5 seeks to have the OCS Kakamega Police Station provide security to the surveyor during the survey exercise. Prayer 4 seeks to empower the court's Deputy Registrar to sign all the relevant documents towards registration and demarcation of the land. It seems that the applicant's co-administrators have refused to sign the documents to enable registration of the land to proceed.
7. Prayers 2 and 5 are granted on condition that the applicant pays the requisite fees. Prayer No. 4 to empower the court's Deputy Registrar to sign the relevant documents so as to facilitate survey, demarcation and registration of the land is granted.
8. As for prayer No. 6, it will be difficult for this court to compel the respondents to pay the costs stated in the prayer. The applicant has the option of using his own money and claiming it from the respondents. The court cannot issue orders that will be difficult to execute.
9. In the foregoing, prayers No. 1, 3 and 6 of the notice of motion dated 5/7/2018 are declined. Prayer No. 2, 4 and 5 are granted on condition that the applicant pays the requisite fees.

**Delivered, dated and signed in open court at Kakamega this 5<sup>th</sup> day of February, 2020.**

**J. NJAGI**

**JUDGE**

In the presence of:

Applicant - present

Respondents - absent

Court Assistant - Polycap

30 days right of appeal.