



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 807 of 2004

IN THE MATTER OF THE ESTATE OF ONGWENY WAYUNGU (DECEASED)

BETWEEN

CHARLES ONDIEK AWUOR.....1ST APPLICANT

SOSPETER ONYANGO AWUOR.....2ND APPLICANT

AND

JACOB ODHIAMBO OTIENO.....RESPONDENT

JUDGMENT

Introduction

1. On 27th June, 2019, this court after hearing an objection by **JACOB ODHIAMBO OTIENO (*Respondent*)** issued the following orders: **THAT**

a) Letters of administration issued on 3rd July, 2012 in favour of CHARLES ONDIEK OWUOR and SOSPETER ONYANGO OWUOR and the grant confirmed in favour of CHARLES AWUOR, FRED AWUOR, WILLIS AWUOR, PETER OMOLLO and SOSPETER ONYANGO on 14th April, 2015 be and are hereby revoked.

b) Any sub-division and transfer in respect of Land Parcel Nos. KISUMU/WANGAYA I/1954; KISUMU/WANGAYA I/1957 and KISUMU/WANGAYA I/2555 is hereby cancelled and it is ordered that ownership in respect thereof shall revert to the name of ONGWENY WAYUNGU (DECEASED).

c) CHARLES ONDIEK AWUOR and JACOB ODHIAMBO OTIENO are hereby appointed joint administrators of the deceased's estate

d) Upon issuance of the Letters of Administration, CHARLES ONDIEK AWUOR and JACOB ODHIAMBO OTIENO shall within 30 days from the date thereof proceed to apply for confirmation of the grant in accordance with the provisions of the law after ascertaining and determining all the beneficiaries and their respective beneficial entitlement to the estate

2. Subsequently by a notice of motion dated 29th July, 2019 filed on even date, **CHARLES ONDIEK AWUOR and SOSPETER ONYANGO AWUOR (*Applicants*)** sought orders **THAT**:

1) There be a stay of orders and all proceedings further to the judgment dated 27th June, 2019 pending the hearing and determination of the appeal

2) An interim order of injunction do issue restraining the Respondent either by himself, his servants and or agents or anyone whomsoever claiming title or acting on his behalf from remaining in, occupying, continuing to occupy or doing any act on Land Parcel Nos. KISUMU/WANGAYA I/1954; KISUMU/WANGAYA I/1957 and KISUMU/WANGAYA I/2555 (*suit properties*) pending the hearing and determination of the appeal

3) Costs be in the cause

3. By a ruling dated 21st November, 2019, the Applicants' application was disallowed with costs to the Respondent.

4. In the current notice of motion dated 31st January, 2020 filed on even date, the Applicants seek orders **THAT:**

1) The Applicants be granted leave to appeal against the judgment dated 27th June, 2019 and ruling dated 21st November, 2019

2) Costs be in the cause

5. The application is based on the grounds among others that the Applicants cannot appeal without seeking leave. The application is supported by an affidavit sworn on 31st January, 2020 by **CHARLES ONDIEK AWUOR (the 1st Applicant)** in which he reiterates the grounds on the face of the application and further states that the Applicants are aggrieved by the judgment dated 27th June, 2019 and ruling dated 21st November, 2019. Annexed to the affidavit is a notice of appeal and a draft memorandum of appeal marked COA. 1 and 6 respectively.

6. The application is opposed by a replying affidavit sworn by the Respondent on 28th February, 2020 on the ground that it was filed with unexplained undue delay.

7. Whereas the Applicants have not offered any explanation for their failure to seek leave to appeal for 5 months since the impugned judgment was delivered, I find that this case involves land which is a sensitive issue and the Applicants should be allowed to have the issues involved in their dispute determined by a court of last resort. (See Mugah v Kunga (1988) KLR).

DISPOSITION

8. In the end, the Applicants notice of motion dated 31st January, 2020 filed on even date is allowed and the Applicants are granted leave to appeal against the judgment dated 27th June, 2019 and ruling dated 21st November, 2019.

DATED THIS 14th DAY OF April 2020

T. W. CHERERE

JUDGE

Court assistants - Ms. Amondi/Ms. Okodoi

For Applicants - Mwamu & Co. Advocates

For Respondent - Otieno Yogo & Co. Advocates

Order

This ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID -19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March, 2020.