



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1653 OF 2015**

**IN THE MATTER OF THE ESTATE OF KAMAWE MWEGA alias KAMAWE S/O MWEGA (DECEASED)**

**JOSEPH KAMAWE MWEGA.....OBJECTOR/APPLICANT**

**VERSUS**

**CHARITY WANJIRU KAMAWE)**

**AMOS NG'ANG'A KAMAWE).....ADMINISTRATOR/RESPONDENTS**

**R U L I N G**

1. The application subject of this ruling is dated 6<sup>th</sup> July 2015 and seeking for two substantive prayers namely;

- **The orders made on 2<sup>nd</sup> July, 2015 by E. O. Wambo, Resident Magistrate Githunguri in P&A 84 of 2014 removing all cautions against Title Number Komothoi/Kiambururu/317 and directing the Land Registrar to register the names of Lilian Njeri Kamawe and Charity Wanjiku Kamawe as proprietors of the same without any procedural requirements be stayed.**
- **The grant of letters of administration issued to Lilian Njeri Kamawe and Charity Wanjiku Kamawe on 23<sup>rd</sup> October, 2014 and confirmed on 2<sup>nd</sup> July, 2015 be revoked/annulled.**

2. The application was predicated on grounds that the petitioners concealed from the court the value of the subject property which was beyond the value which would otherwise give rise to the court's jurisdiction, and though the matter was brought as an intestate estate the grant was made as though the deceased left a will; the trial court, issued orders not sought for; the court was biased, and finally the orders were un-procedural.

3. The application was supported by an affidavit expounding the above said grounds and stating further that the land subject matter is worth over 10 million shillings; the administrators represented to court that the deceased had given them parcel No. **Komothai/Kiambururu/317** yet the deceased had given transfer documents to the applicant but stopped short due to a caution. Further the court acted in a biased manner and went ahead to order removal of cautions.

4. The application was objected to through a replying affidavit of Charity Wanjiku Kamawe, the 1<sup>st</sup> administrator.

5. In the said affidavit the Respondents denied that they had concealed the value of the land in dispute as no valuation has ever been undertaken, further it is urged that the Applicant who was represented at the trial did not raise the issue of the parcel's value, nor question the court's jurisdiction. That the deceased gifted to all his children property during his life time and details thereof reduced into writing by the deceased on the 11<sup>th</sup> November, 2007. The injunctive orders being sought are meant to unduly prejudice the respondents who have over the years cultivated the land.

6. Both sides were represented at trial and the issue if any on jurisdiction of the trial magistrate ought to have been raised then. Clearly the issue being raised now is an afterthought and cannot form a basis for the orders being sought. Secondly in my view the trial court having found the application by the current applicant unmerited rightly directed the Land Registrar to remove the existing caution. I see nothing unprocedural that would inform a stay.

7. Thirdly, the Applicant failed in his application to prove the alleged bias by the trial court. The entire application fails with costs to the respondents/administrators.

**DATED DELIVERED and SIGNED THIS 11<sup>th</sup> DAY OF JUNE, 2020.**

.....

**ALI-ARONI**

**JUDGE**