



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: A.K NDUNG'U J

SUCCESSION CAUSE NO 53 OF 2007

IN THE MATTER OF THE ESTATE OF LAMECK OMWOYO (DECEASED)

MARY OMWOYO.....APPLICANT

RULING

1. Before court is the application dated 19th June 2020 seeking that the court directs the Land Registrar Kisii County to register plot no. 2682 in the joint names of MARY OMWOYO, MOSES MOGIRE OMWOYO and ERIC ONGAU OMWOYO.

2. The application is premised on the affidavits of the applicant and on grounds that;

1. ...

2. *That the grant herein was confirmed by this honourable court on the 4th day of November, 2008.*

3. *That thereafter on the 13th November 2008, the certificate for confirmation of grant was issued.*

4. *THAT the schedule and/or mode of distribution referenced to in the aforesaid certificate of confirmation (sic) grant provide that "PLT NO. 2682 shall be registered in the joint names of MARY OMWOYO and JARED OGECHA ONGIRI, who shall hold the same in trust for the benefit of the minor beneficiaries Moses Mogire Omwoyo and Eric Ongau Omwoyo. Upon attainment of the age of the majority by the minor, the aforesaid property shall be registered in the joint names of MARY OMWOYO and the two sons of the deceased. The deceased's spouse shall have life interest of the same."*

5. *THAT the aforesaid minors have now attained the age of majority thus necessitating this application in compliance with the above quoted orders and/or direction of the Honourable judge D. Musinga.*

6. *THAT this application has been timeously brought without any reasonable delay and in the sole interest of justice and fairness.*

7. ...

3. After carefully looking at the record in its entirety, I note that the certificate of confirmation of grant dated 13th November 2008 remains unchallenged and is still in force.

4. According to the confirmed grant MARY OMWOYO and JARED OGECHA ONGIRI were to hold the land in trust for the benefit of the minor beneficiaries Moses Mogire Omwoyo and Eric Ongau Omwoyo. Following the orders in the confirmed grant the two administrators processed the titled deed for parcel 2682 and now seek further orders directing the Land Registrar Kisii County to register Plot No. 2682 in the joint names of MARY OMWOYO, MOSES MOGIRE OMWOYO and ERIC ONGAU OMWOYO.

5. The Order of Court as contained in the Certificate of Confirmation of grant dated 13.11.2008 has not been reviewed, quashed or otherwise set aside. The said order was explicit on the distribution of the estate of the deceased. Mary Omwoyo and Jared Ogecha Ongiri were to hold the subject land in trust for the benefit of the minors (by then) beneficiaries, Moses Mogire Omwoyo and Eric Ongau Omwoyo.

6. Upon attainment of the age of majority by the minor beneficiaries, the subject property was to be registered in the joint names of Mary Omwoyo, Moses Mogire Omwoyo and Eric Ongau Omwoyo.

7. *Strictu sensu*, the coming into effect of this order did not require the filing of this application as the only requirement would be an extraction of the order and service of the same on the Land Registrar.

8. In the premises, the application before court is in a sense superfluous. What it seeks could be achieved without a formal application. That in no way takes away its merits.

9. Accordingly, I will allow the application and order that the Land Registrar Kisii County to register Plot No. 2682 in the joint names of Mary Omwoyo, Moses Mogire Omwoyo and Eric Ongau Omwoyo as per the orders contained in the certificate of confirmation of grant dated 13.11.2008.

10. Costs shall be in the cause.

Dated, Signed and Delivered at KISII this 14TH day of OCTOBER 2020.

A. K NDUNG'U

JUDGE