



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 44 OF 2001**

**IN THE MATTER OF THE ESTATE OF SHILAMA KAKAI (DECEASED)**

**RULING**

1. The application for determination is dated 10<sup>th</sup> August 2015, and it is brought at the instance of Lawrence Kwatsima Lichina, who I shall hereafter refer to as the applicant. It seeks:

a. that the confirmed grant made on 13<sup>th</sup> July 2011 be annulled; and

b. that there be a reissue of a confirmed grant amending the share of John Anyika to be allocated to Lawrence Kwatsima Lichina.

2. It is premised on the grounds set out on its face, as well as the facts deposed in the affidavit of the applicant sworn in support on 10<sup>th</sup> August 2015. The essential point is that the court had in Kakamega HCCC No. 4 of 2003 (OS) awarded half of Idakho/Shiseso/822 to the applicant, with the other half going to Chukuyu Shilama, the person named herein as the respondent. He avers that the confirmed grant be amended to include his name instead of that of John Anyika. A copy of the judgement is attached.

3. There is a reply to the application by the person named in it as respondent, Philip Chukuyu Shilama, vide an affidavit he swore on 10<sup>th</sup> February 2016. He states that the grant was confirmed on 13<sup>th</sup> July 2011, and asserts that he was entitled to half of Idakho/Shiseso/822, while his brother, John Anyika, was entitled to the other half. He avers that John Anyika had sold his share applicant, and that the applicant had a legitimate claim to his brother's share but not his.

4. The deceased herein died in 1970. This cause was initiated in 2001. A grant of letters of administration was made on 28<sup>th</sup> June 2001 to the respondent and another person. The grant was confirmed on 13<sup>th</sup> July 2011, and a certificate of confirmation of grant was issued on even date. The disputed property devolved upon the respondent and John Anyika in equal shares.

5. The applicant has placed on record a judgment that was delivered on 3<sup>rd</sup> July 2014, in Kakamega HCCC No. 4 of 2003, which was a suit between the applicant and the respondent and another, who appear to have had been sued as the administrators of the estate herein.. In the end the court found in favour of the applicant herein, where it is held as follows:

*“Having found that the plaintiff bought part of the land as opposed to the entire land and since the defendant is not opposed to the plaintiff's taking the portion meant for PW4, I do find that the plaintiff has acquired a title to half of the suit land plot No. IDAKHO/SHISESO/822 by way of adverse possession. The plaintiff to be registered as a proprietor of ½ of the suit land while the defendant PHILIP CHUKUYU SHILAMA to be registered as the proprietor of the other half.”*

6. That order in that civil suit required that the applicant be registered as owner of half of Idakho/Shiseso/822. I would have expected that the applicant would have extracted a formal decree from the judgment and served it on the relevant land registrar for implementation. If the land registrar failed to honour the decree, the applicant could have pursued the option of judicial review. To my mind there was no need for the applicant to come to the probate court for enforcement of the judgment. He has a court decree which he should be able to enforce through the relevant land legislation.

7. Be that as it may. The record reflects that the persons that he had sued in the civil case were the administrators of the estate herein. Indeed, this cause was initiated at his prompting when he cited the children of the deceased to take out representation. The respondent administrator is not opposed to the application.

8. The prayers in the application are framed in a manner which is not entirely clear nor elegant, but the orders that I am minded to give are as follows:

**a. that the certificate of confirmation of grant dated 13<sup>th</sup> July 2011 shall be amended by removing the name of John Anyika from amongst the individuals listed as entitled to equal share of Idakho/Shiseso/822, to be substituted by the name of the applicant, Lawrence Kwatsima Lichina;**

**b. that each party shall bear their own costs; and**

**c. that any party aggrieved by the orders made herein has the liberty to challenge the same at the Court of Appeal within twenty-eight (28) days of date hereof.**

**DATED, SIGNED and DELIVERED at KAKAMEGA this 18<sup>th</sup> DAY OF October, 2019**

**W. MUSYOKA**

**JUDGE**