



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 668 OF 2015

IN THE MATTER OF THE ESTATE OF ISMAIL BWAKALI SAMBICHA alias BWAKALI SAMBICHA ISMAIL (DECEASED)

RULING

1. I delivered a ruling herein on 3rd December 2018, wherein I made certain findings concerning the assets of the estate herein. I directed the land registrar to do certain things to facilitate solution to the impasse on the matter. Apparently the land registrar is not cooperating for some unknown reason.

2. It must be stated that succession proceedings are all about property. The court can only distribute the property of a dead person once that property has been ascertained. Where there are uncertainties about the property, only the custodian of government records on ownership of that property can assist the parties. .

3. The office of a land registrar is an office in the public service. The holder of that office is a public servant, serving for the benefit of the people, paid from public funds. He has a duty to serve the public. Whatever he does should not at his own whim. He is publically called to serve the people whose records he is custodian of. When such a person is directed by the court to do something or other to assist parties who are in court resolve their problems, he should be under a duty to comply. The court has coercive powers to compel compliance with its orders in cases where those who are expected to comply show arrogance and a cavalier attitude. Failure to obey such orders or display of disinterest could also be indication that the public officer could have something to hide, especially in such a case as the present where it is said property of an estate was subdivided and registration done without going through the mandatory succession process as expected in law. A lands officer who refuses to come to court to account for such anomalies exposes himself to accusations of running away from scrutiny.

4. Let me leave it at that. Issues relating to registration of land are governed by land legislation, the Land Registration Act (No. 3 of 2012) and the Land Act (No. 6 of 2012). Under that law, as read with Articles 162(2) and 165(5) of the Constitution, the High Court has no jurisdiction to call land registrars to account for their administration of land under that law. Under sections 2 and 101 of the Land Registration Act, the court for the purposes of that law is the Environment and Land Court.

5. The relevant provisions of the Land Registration Act state as follows:

“2. “Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011, No. 19 of 2011 ...”

Jurisdiction of court.

101. The Environment and Land Court established by the Environment and Land Court Act, 2011 No. 19 of 2011 has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

6. The relevant constitutional provisions state as follows:

‘162(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) ...

(b) the environment and the use and occupation of, and title to, land.

165(5) The High Court shall not have jurisdiction in respect of matters—

(a) ...

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).”

7. In view of what I have stated above, I would urge the administratrix to purpose issues on accountability by the relevant land registrar through the relevant land legislation and the Environment and Land Court. The assets of the estate vest in her by virtue of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya, and she can sue over such assets under section 82 of the same Act.

8. Let the administratrix obtain orders from the Environment and Land Court on ownership of the subject property. Once the ownership of the property is ascertained through that process, the probate court shall proceed to distribute it in the usual way.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 1ST DAY OF NOVEMBER 2019

W. MUSYOKA

JUDGE