



**REPUBLIC OF KENYA**

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

**[Coram: A. C. Mrima, J.]**

**MISC. APPLICATION NO. 262 OF 2015**

**IN THE MATTER OF THE ESTATE OF NGUKRI OORO (DECEASED)**

**-between-**

**PHESTO ALOO OORO & 4 OTHERS.....PROTESTORS**

**-versus-**

**JOHNSON AMEK OORO.....PETITIONER/RESPONDENT**

**-and-**

**SAMSON OUMA APINA.....INTERESTED PARTY**

**RULING NO. 2**

1. By a ruling rendered on 12/07/2018 the confirmation proceedings undertaken before the **Migori Senior Resident Magistrates Court Succession Cause No. 95 of 2012** (hereinafter referred to as '**the Cause**') were set-aside and the Summons for Confirmation of the Grant dated 04/04/2013 ordered to be re-heard. I will refer to the said Summons for Confirmation of the Grant as '**the Summons**'.

2. The Summons was filed in the Cause. It was supported by the Affidavit sworn by **Johnson Amek Ooro** on 04/04/2013. The Petitioner deponed that the estate of the deceased herein, **Ngukri Ooro**, was comprised of the parcel of land known as **Suna East/Wasweta I/9238** (hereinafter referred to as '**the land**').

3. The Petitioner further deponed that the deceased had prior to his death sold the land to the Interested Party herein. He prayed that the Grant be confirmed and the land be transferred to the name of the Interested party.

4. The Summons was opposed. Five Protestors contended otherwise. They relied on the Affidavit of Protest filed by **Phesto Aloo Ooro** filed on their behalf. They deponed that prior to his death the deceased herein had sold part of the land to two people. That, he had sold 0.87 Hectares to one **John Adongo Baranaba** and 5 Acres to **Misumali Ali**. They also deponed that although the said Misumali Ali was dead he had left behind his wife one Rose Iminza and their children who lived on part of the land to date. They posited that the remainder of the land should devolve to one **Joseph Onyango Nyanjua**, a son to the Petitioner's younger brother.

5. The Protestors vehemently denied the alleged sale of the land to the Interested Party.

6. This Court directed that the Interested Party do take part in the hearing. He filed a Replying Affidavit and contended that he bought the land without any notice of fraud and as such he acquired good title under **Section 93(2)** of the **Law of Succession Act, Cap. 160** of the Laws of Kenya.

7. The Summons was heard by way of reliance on the Affidavit evidence. All parties filed written submissions. The Interested Party relied on several decisions in buttressing his position.

8. I have carefully perused the Summons and the Protest together with the response by the Interested Party. I have also considered the submissions.

9. As rightly pointed out by the Petitioner in his submissions, the dispute herein revolves on the distribution of the land. There are two opposing sides. On one hand, the Petitioner contended that the deceased had sold the land to the Interested Party prior to his death. He however annexed a copy of a Sale of Land Agreement between himself and the Interested Party dated 14/09/2013. The Interested Party

joined hands with the Petitioner. He contended that the Petitioner sold the land to him by virtue of him being the Administrator of the estate of the deceased and as such he acquired an indefeasible title to the land.

10. On the other hand, the Protestors contended that the deceased had *inter alia* sold part of the land to two other people. They denied the alleged sale of the land to the Interested Party.

11. The issue as to whether the sale of the land to the Interested Party is protected by **Section 93(2)** of the **Law of Succession Act** is a matter falling squarely for determination before this Court. However, the issue as to whether the deceased sold part of the land to John Adongo Baranaba and Misumali Ali is one outside the ambit of this Court.

12. I find that it will not be prudent to deal with the issue of **Section 93(2)** of the **Law of Succession Act** while the alleged sale to John Adongo Baranaba and Misumali Ali remain unsettled. There is need for the status of the said John Adongo Baranaba and Misumali Ali be determined since they are [or their people] on the land as well. I would have readily proceeded to resolve the issue of the occupation of the land by the two alleged purchasers *vis-à-vis* the sale to the Interested Party, but my legal hands are tied. As a caged animal, I can, but only move within the cage of jurisdiction. (See the Court of Appeal in **Peter Moturi Ogutu vs. Elmelda Basweti Matonda & 3 others (2013) eKLR, Muthuita vs. Muthuita (1982-88) 1 KAR 42** and **Chogera vs. Maria Wanjira Kimani & Others (2005) eKLR**).

13. Once the ownership and occupation by John Adongo Baranaba and Misumali Ali is determined then the other issue raised by the Petitioner and the Interested Party would be dealt with. For instance, if it is determined that the said John Adongo Baranaba and Misumali Ali lawfully purchased the portions of the land then they would become beneficiaries to the estate of the deceased. Their interest would then be weighed against that of the Interested Party and/or the other beneficiaries. Until the determination is made, there is need to exercise restraint.

14. So as to avoid unnecessary confusion in this matter I hereby make the following orders: -

**(a) The determination of the Summons for Confirmation of the Grant dated 04/04/2013 be and is hereby stayed. For clarity, the prevailing *status quo* on the parcel of land known as Suna East/Wasweta I/9238 shall be maintained pending further orders of this Court.**

**(b) John Adongo Baranaba and Misumali Ali and/or their estates shall take steps towards ascertaining their rights over the parcel of land known as Suna East/Wasweta I/9238. To that end, the Protestors herein shall serve the said John Adongo Baranaba and Misumali Ali and/or their estates with copies of this ruling within 30 days of delivery.**

**(c) Upon service, the said John Adongo Baranaba and Misumali Ali and/or their estates shall within 90 days of service institute any such appropriate proceedings.**

**(d) In the event of non-compliance, the stay orders shall stand discharged and the Summons for Confirmation of the Grant dated 04/04/2013 shall be determined.**

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT MIGORI THIS 10TH DAY OF DECEMBER, 2019.**

**A. C. MRIMA**

**JUDGE**

**Ruling delivered in open Court and in the presence of:**

**Mr. Sam Onyango** Counsel instructed by Messrs. Sam Onyango & Company Advocates for the Petitioner.

**Mr. Odingo** Counsel instructed by Messrs. Odingo & Company Advocates for the Protestors.

**Mr. Mwita Kerario** Counsel instructed by Messrs. Kerario Marwa & Company Advocates for the Interested Party.

**Evelyne Nyauke** – Court Assistant