



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE AND ADMINISTRATION NO. 130 OF 2015**

**IN THE MATTER OF THE ESTATE OF ORODE IKWENYE OLOGE.....DECEASED**

**AND**

**IN THE MATTER OF THE LATE JOSEPHAT JUMA ORODE**

**AND**

**BENSON ORODE.....APPLICANT/1<sup>ST</sup> PETITIONER**

**VERSUS**

**CHRISPINUS WILLIAM PAMBA.....RESPONDENT**

**RULING**

**(Chamber Summons application dated 3<sup>rd</sup> February, 2016)**

1. Through the Chamber Summons application dated 3<sup>rd</sup> February, 2016, the 1<sup>st</sup> Petitioner, Benson Orode prays for the substitution of Chrispinus William Pamba who is a liability to the estate of the deceased Orode Ikwenye Ologe with that of Roshel Ibolet Imo. The application is supported by an affidavit sworn on the date of the application by the Applicant. It is not clear from the application and the affidavit whether the 2<sup>nd</sup> Petitioner Chrispinus Orode Osike is in support of the application.
2. The Respondent opposed the application through an affidavit dated 6<sup>th</sup> June, 2016.
3. The Applicant's case is that the Respondent, Chrispinus William Pamba entered into a land sale agreement with the late Josephat Juma Orode in which he purchased a portion of land being the late Josephat Juma Oroge's share as a beneficiary of the estate of the deceased Orode Ikwenye Ologe to which these proceedings relate.
4. It is the Applicant's case that they learned of the said agreement during the burial of the Josephat Juma Orode. According to him, it is then that the family members sat down with the Respondent and they agreed that he pays the balance of the purchase price and also pays school fees for the sons of the late Josephat Juma Orode.
5. The Applicant avers that the Respondent has since become uncooperative and arrogant. He thus prays that the name of the Respondent be removed from the affidavit (Form P&A5) sworn and filed on 23<sup>rd</sup>

March, 2015 by the petitioners in support of the petition for grant of letters of administration to the estate of the deceased Orode Ikwenye Ologe. He asks that the Applicant's name which is found in the liabilities section be replaced with that of Roshel Ibolet Imo.

6. The Respondent's case is that he purchased 1½ acres of land out of L.R. No. South Teso/Apokor/1414 on 19<sup>th</sup> June, 2000 for a consideration of Kshs.45,000.00 which was paid in full. He avers that Roshel Ibolet Imo purchased the land on 3<sup>rd</sup> February, 2013 when succession was underway.

7. The Respondent avers that he has been in possession of the land for over 15 years and the application to substitute his name with that of another purchaser is made in bad faith. Secondly, he avers that the Applicant is the one who sold the land to Roshel Ibolet Imo and yet he was a witness to the land sale agreement between him and the late Josephat Ojuma Orode. He also discloses that he is the one who facilitated the filing of this probate and administration cause.

8. The application before this Court raises an interesting question. Can an affidavit be amended through an application? Form P&A5 is an affidavit. As nobody has asked for an answer to that question, I will leave it at that. I will only confine this ruling to the question as to whether the Applicant has laid a basis for the grant of the order sought.

9. Let me first point out that the claim of Roshel Ibolet Imo and that of Respondent have no legal basis. The grant issued to the Applicant and his co-petitioner is yet to be confirmed. He therefore has no power to sell land forming the estate of the deceased Orode Ikwenye Ologe.

10. As for the Respondent, he bought land from the late Josephat Ojuma Orode a beneficiary of the estate of Orode Ikwenye Ologe. By then, no succession proceedings had been undertaken in regard to the estate of the deceased. The late Josephat Ojuma Orode did not therefore have title to the land of the deceased Orode Ikwenye Ologe which he could pass to the Respondent through a sale agreement.

11. Now turning to the application at hand, I find that the Applicant's application seeks to invalidate an agreement between the late Josephat Ojuma Orode and the Respondent. Although the Applicant was a witness to that agreement, he was not a party to the same. Secondly, the Applicant and his co-petitioner acknowledged the Respondent's claim by including him as a liability to the estate of the deceased Orode Ikwenye Ologe. Josephat Ojuma Ologe who sold land to the Respondent is a beneficiary of that estate. No good reason has been advanced as to why a person who has settled on the land for over 15 years should be kicked out and replaced with someone else.

12. My view of the application before me is that the same has no merit. In a language that the petitioners will easily understand, the grant of the letters of administration in this matter should proceed to confirmation with the Respondent's name and share reflected in the list of beneficiaries.

13. The Applicant's move was misadvised. I will not punish the same with costs but direct that each party will meet own costs of this application.

**Dated, signed and delivered at Busia this 16<sup>th</sup> day of March, 2017.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**