



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO. 19 OF 2009

IN THE MATTER OF THE ESTATE OF MORRIS AMOS OSINYA (DECEASED)

BERNARD GODWIN OSINYA.....PETITIONER/RESPONDENT

VERSUS

STANLEY NAMACHI SHIUNDU.....OBJECTOR/APPLICANT

RULING

[Chamber Summons Application dated 11th May, 2009]

1. Through the Chamber Summons application dated 11th May, 2009, the Objector Stanley Namachi Shiundu prays for orders as follows:-

“1. THAT succession cause filed herein by the administrator Bernard Godwin Osinya on 26th January, 2009 omitted my name as a purchaser.

2. THAT the cost of this application be provided for.”

2. The application is supported by an affidavit sworn by the Objector on 11th May, 2009. It is important for the purposes of this ruling to reproduce the said affidavit, in which the Objector avers: -

“1. THAT I am a male adult person of sound mind hence competent to swear this affidavit.

2. THAT the full name of the deceased whose estate the proceedings herein relate to is MOURICE AMOS OSINYA and I am the Objector.

3. THAT I entered into a land sale agreement with the deceased’s wife for the whole parcel SAMIA/LUANDA-MUDOMA/1525 measuring (0.95 HA). Attached hereto is the sale agreement marked SNS 1.

4. THAT the administrator Bernard Godwin Osinya filed succession without my Knowledge and he did not include my name as purchaser. Attached hereto is P & A Form No. 5.

5. THAT the administrator herein is on the mission of occupying the entire estate.

7. THAT what is deponed herein is true to the best of my knowledge, information and belief.

3. The Respondent Bernard Godwin Osinya opposed the application through a replying affidavit sworn on 24th February, 2010. He averred that his uncle one Robert Odweri is the one who sold the said parcel of land to the Objector. He contended that his mother never sold the said parcel of land to the Objector as she was chased away upon the demise of his father Mourice Amos Osinya to whose estate these proceedings relate.

4. As the said application was pending before this Court, the Objector moved to Funyula Land Disputes Tribunal where he successfully claimed for the land in question against the Respondent herein. The order of the Tribunal was adopted by Busia chief Magistrate's Court in Land Case No. 81 of 2009. On the strength of that order, the Objector had L.R. No. SAMIA-LUANDA/MUDOMA/1520 registered in his name.

5. As a result of the Objector's action, the Respondent filed an application dated 5th February, 2010 seeking orders as follows: -

“a) There be a Prohibitory Order placed on the parcel No. SAMIA/LUANDA-MUDOMA/1525 restricting the Objector herein from transferring and/or using the said parcel which is currently registered into his names until further Orders from this court.

b) THAT parcel No. SAMIA/LUANDA-MUDOMA/1525, currently registered into the names of the Objector on the 11th December, 2009 be reverted back to the names of the Deceased, MOURICE AMOS OSINYA, pending the final determination of the Probate and Administration Cause herein.

(c) The Objector herein, be punished under the provisions of Section 45 of cap. 160 for intermeddling with the Estate of the deceased herein.

(d) Costs of this application to be paid by the Objector herein.”

6. The said application was heard and on 14th November, 2011 D.A. Onyancha, J delivered a ruling in which he granted the prohibition sought by the Respondent. Through the same ruling the learned Judge held that the issue of reverting the title back to the name of the deceased and the question of punishing the Applicant for intermeddling would have to await the outcome of the objection proceedings.

7. The advocates agreed that this matter proceeds by way of written submissions. The Objector filed submissions dated 23rd February, 2017 on 27th February, 2017 whereas the Respondent filed his submissions dated 24th February, 2017 on 27th February, 2017.

8. In the submissions, the Objector changed his application without making a formal amendment and argued thus: -

“The Objector's main contention is not the grant per se but the inclusion of the suit land herein as property belonging to the deceased person and the denial by the Petitioner herein that the said land was purchased by the Objector herein.”

9. On the other hand, the Respondent's submissions appear to be in support of his application dated 5th February, 2010 as they are targeted at the decision of Funyula Land Disputes Tribunal.

10. I must state that the parties herein have gotten themselves in a muddle and it is only them who can unravel the maze which they have gotten themselves into.

11. The application that is before this Court is in the nature of objection proceedings. In that application, the Applicant alleged that the Respondent had proceeded to petition for grant of letters of administration to the estate of Mourice Amos Osinya without recognizing him as a purchaser. As matters stand now,

that application was overtaken by events in 2009 when the Applicant got himself registered as the proprietor of the land in question. There is therefore nothing for this Court to consider.

12. How about the legality of the process in which the Applicant had himself registered as the proprietor of the land he allegedly bought from the deceased father of the Respondent? That is not a question to be answered through this ruling. The basis of the Objector's case is that he had not been included as a beneficiary of the estate of the deceased Mourice Amos Osinya. As his application was pending he went ahead and had himself registered as the owner of the land in dispute. His actions thereby rendered his application otiose. In order to clean the court record, the said application is dismissed.

13. It is however noted that the Petitioner's application dated 5th February, 2010 remains unheard. It is important to hear that application so that the legality or otherwise of the Objector's decision to register the said land in his name can be determined.

14. Each party will meet own costs of the application dated 11th May, 2009.

Dated and signed at Malindi this 27th day of June, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT

Dated, delivered and signed at Busia this 12th day of July, 2017

K. W. KIARE,

JUDGE OF THE HIGH COURT