



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

SUCCESSION CAUSE NO. 110 OF 2015

**IN THE MATTER OF THE ESTATE OF KASAINA OLE KUYONI ALIAS JOSEPH KASAINA
(DECEASED)**

MOSES SAYTANGA.....APPLICANT

-Versus -

PETER NDABI REBO.....RESPONDENT

RULING

Moses Saytanga, the applicant, brought this application by chamber summons under section 47 of the Law of Succession and Rules 49 and 73 of the Probate and Administration Rules seeking orders that:-

- 1. This honourable court be pleased to correct Order No. 6 of the ruling made on 18.3.2016 to read: the titles arising out of the subdivision of KAJIADO/OLCHORO-ONYORE/53 and all other subsequent titles be and are hereby revoked.**
- 2. That the honourable judge/court be please to direct that the District Land Registrar Kajiado North District do revert title No. KAJIADO/OLCHORO-ONYORE/53 to the original registered proprietors namely;**

Loipo Ole Ngutate - 1/3 share

Ngethe Karuga – 1/3 share and

Kasaine Kuyoni – 1/3 share as envisaged in Order No. 7 of the ruling dated 18/3/16.

- 3. That the honourable judge do extend time within which the applicant shall apply for Grant of Letters of Administration.**

The application is supported on the grounds on the face of the summons. It is further supported by an affidavit sworn by applicant one MOSES SAYTANGA dated 11/4/2016 and filed in court the same day.

In the summons the applicant sets out four grounds listed as follows:

- 1. That the land that gave rise to all other titles in this matter was land parcel No. KAJIADO/OLCHORO/ONYORE/53.**
- 2. That the District Land Registrar Kajiado North is the person capable of reverting the title No.**

KAJIADO/OLCHORO/ONYORE/53 to the names of the original owners.

3. That land parcel No. **KAJIADO/OLCHORO/ONYORE/53** was originally registered in the names of three proprietors namely;

Loipo Ole Ngutate - 1/3 share, Ngethe Karuga – 1/3 share and Kasaine Kuyoni – 1/3 share.

4. That the applicant would be unable to petition for Letters of Administration intestate within the time ordered on the 18.3.2016 since the parcel No. **KAJIADO/OLCHORO/ONYORE/53** must revert to the original registered proprietors and this form the estate of his father KASAIN OLE KUYONI (Deceased).

A summary of what the applicant averred in his affidavit to support his summons is as follows:

1. That the ruling of the honourable court dated 18/3/2016 has been read and contents understood.
2. That this honourable court revoked/annulled Grant of Letters of Administration that had been issued and confirmed by the Senior Resident Magistrate Court at Kajiado in Succession Cause No. 8 of 2002. This was in the matter of the estate of the late KASAIN OLE KUYONI alias JOSEPH KASAIN.
3. That the honourable court ordered that the titles to the subdivisions to title deed **KAJIADO/OLCHORO/ONYORE/53** be revoked and title be reverted to title No. **KAJIADO/OLCHORO/ONYORE/53** a fact which is not clear in the typed ruling of this honourable court since title No. **KAJIADO/OLCHORO/ONYORE/53** did not result from a subdivision.
4. That it is not clear from the ruling which titles have been revoked and to whom the order to revert title No. **KAJIADO/OLCHORO/ONYORE/53** is directed to.
5. That the ruling of the honourable court ought to be extended before petition of Letters of Administration can be made.

The application was only served upon the respondent but neither did he file a replying affidavit nor grounds of opposition. The applicant was the respondent to the original objector application to revoke/annul the certificate of confirmation of grant dated 27th April 2012.

The applicant was represented by Mr. Waweru Munyi who argued the application based on the affidavit evidence and grounds on the face of the summons.

I have considered the summons, the grounds in support and affidavit by the applicant. In his summons the applicant asks this court to recall the ruling dated 18.3.2016 in which he was the respondent and amend it or vary it to make provisions for the wording in Order No. 6. He asks this court to clarify the words appearing under Order No. 6 of the ruling to read **“the titles arising out of subdivisions of KAJIADO/OLCHORO/ONYORE/53 and all other subsequent titles be and are hereby revoked”**.

The purpose according to the applicant is to cure the injustice likely to be occasioned by the beneficiaries of the estate of KASAIN OLE KUYONI alias JOSEPH KASAIN. He prays that this court applies the inherent powers of the court under Rule 73 of the Probate and Administration Rules to correct the error or injustice caused by the misdescription of the suit property.

Under Rule 73, this court has the power to recall its judgement, ruling or order and make orders as may be necessary for achieving the ends of justice. In doing so, the court is not limited to Rule 73 of the Probate and Administration Rules. The court can apply the slip rule under Section 99 of the Civil Procedure Act 2010, **“to correct error, clerical, mistakes in judgement, decrees or orders arising therein from any accidental slip or omission may at any time be corrected by the court either by its own motion or by an application by a party”**.

This principle was clearly elucidated in the decision of **LAKHAMSHI BROTHERS LTD Vs. R. RAJA & SONS [1966] EA 313 on page 314** where Sir Charles Newbold P stated:

“Indeed there has been a multitude of decisions by this Court on what is known generally as the slip rule, in which the inherent Jurisdiction of the Court to recall a Judgment in order to give effect to its manifest intention has been held to exist. The circumstances however, of the exercise of any such Jurisdiction are very clearly circumscribed. Broadly these circumstances are where the court is asked in the application subsequent to Judgment to give effect to the intention of the Court when it gave its Judgment or to give effect to what clearly would have been the intention of the Court had the matter not inadvertently been omitted. I would here refer to the words of this Court given in the Raina case (2) [1965] E.A. at P. 703) as follows:

“A Court will, of course, only apply the slip rule where it is fully satisfied that it is giving effect to the intention of the Court at the time when Judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.”

These are the circumstances in which this Court will exercise its Jurisdiction and recall its Judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter.....”

The rule extends to matters overlooked such as specifying a date for compliance with an order, or where the judge has misunderstood the evidence or counsels’ submissions.

This is a principle of the greatest importance in the administration of justice for the judge to make corrections to an order, judgement or ruling to carry into effect the actual intention of the judge.

This principle was restated in the case of **UNITED MEXICAN STATES Vs. METACLAD CORPORATION [2001] BCSC 1529**. The court held in reference to the slip rule to make a decision on permitting the correction of any accidental slip or omission in judgement or orders. The rule cannot be used to correct errors of substance.

The court set two of the circumstances where the court has to find it appropriate to re-open the proceedings thus:

- 1. Where the judge fails to deal with a matter which had been brought to the judge’s attention by one of the parties.**
- 2. Where one of the parties should have drawn to the attention of the judge a matter which affects consequence of the primary decision.**

This application before me asks the court to clarify the title subject matter of succession cause **KAJIADO/OLCHORO/ONYORE/53** to revert to the original proprietors. The applicant seeks clarity on Order No. 6 and 7 of the ruling. In the said ruling this court made an order that the suit land do revert to the deceased.

In the application applicant has set out that the suit property **KAJIADO/OLCHORO/ONYORE/53** was registered in three proprietors who owned equal shares namely:

Loipo Ole Ngutate - 1/3 share, Ngethe Karuga – 1/3 share and Kasaine Kuyoni – 1/3 share.

Hence the reference of the land or property as wholly owned by the deceased was beyond the suit before court.

From the submissions by counsel and the record the description of the title

KAJIADO/OLCHORO/ONYORE/53 was inconsistent with the particulars in the green card.

By reason of the overriding objection and duty of the court under the provisions of section 1A and 1B of

the Civil Procedure Act, the duty of the court is to facilitate the just, quick and affordable resolution of the real issues in the proceedings. Therefore words such as error and correct in the slip rule should not be given a narrow interpretation.

What emerges from the provisions of law and application by the applicant, this court has inherent power to make such orders as may be necessary for the ends of justice or prevent abuse of the process of the court.

The intention of the court in the ruling of 18.3.2016 was to administer justice and balance competing interest in determination of their rights.

In my view, whether the blame for failing to properly refer the outstanding issue on the suit property falls on me or counsel for the applicant. This is an appropriate case where I am satisfied that sufficient cause has been shown for me to correct Order No. 6 and 7 of my ruling dated 18.3.2016. The case to correct the order flows from the reasons for the ruling and subsequent orders made. There is an error in expressing the manifest intention of the court as stipulated in summons filed on 11.4.2016.

In conclusion to all I have discussed above, I allow the summons dated 11.4.2016 on the basis that it has merit to warrant this court exercise discretion and do grant the following orders:

- a. That titles arising out of subdivision of **KAJIADO/OLCHORO/ONYORE/53** and all other subsequent titles be and are hereby revoked.
- b. That the District Land Registrar Kajiado North do revert title No. **KAJIADO/OLCHORO/ONYORE/53** to the original registered proprietors namely;
 - i. **Loipo Ole Ngutate - 1/3 share**
 - ii. **Ngethe Karuga – 1/3 share and**
 - iii. **Kasaine Kuyoni – 1/3 share.**
- c. That the District Land Registrar Kajiado North for avoidance of doubt do comply with the above order.
- d. That in view of Order No. 10 of the ruling dated 18.3.2016 this court considers that there has been delay in disposing this application to free parties to comply with declarations made.
- e. That as a result, this court do hereby exercise discretion to enlarge time for a further 60 days to enable the applicant to apply and petition the court for Grant of Letters of Administration and the District Land Registrar Kajiado North to regularize title to the suit land.
- f. That this being a succession cause costs be in the cause.

It is so ordered.

Dated, delivered in open court at Kajiado on 11th day of May, 2016.

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R. NYAKUNDI

JUDGE

Representation:

Ms Mageto for Gachimo for the respondent present

Mr. Waweru for the applicant present

Mr. Mateli Court Assistant.