



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 482 OF 2008

IN THE MATTER OF THE ESTATE OF ANDREW LUNALO
LISANYA.....DECEASED

AND

ANJELINE MAKUNGU ISABWA.....PETITIONER/APPLICANT

AND

EZNA MASITSA LISANZA.....PETITIONER/RESPONDENT

RULING

Introduction

1. Certificate of Confirmation of grant in this matter was issued on the 01.11.2013 and the deceased's estate was to be shared equally between the petitioners. The deceased's estate comprised of all that parcel of land known as LR. No. Kakamega/Bugina/304. Since the confirmation of the grant the beneficiaries have not been able to divide the same because of a caution in favour of one Laban Amadalo Chembagi who claims to be a purchaser of the deceased's estate.

The Application

2. By the notice of motion dated 09.04.2015 the Petitioner/Applicant has moved this court under order 49 Rule. 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking ORDERS;-

1. That this Honourable Court be pleased to lift the caution lodged on that parcel of land known as KAKAMEGA/BUGINA/304

2. That this Honourable Court be pleased to authorize the Deputy Registrar of this court to execute and/or sign all relevant documents necessary to effect the subdivision of that parcel LR.No. KAKAMEGA/BUGINA/304 as reflected on the certificate of confirmation of grant dated 14.10.2013.

3. That costs be provided

3. The application is based on the grounds that since the grant was confirmed way back in October 2013 the respondent has declined to sign sub division instruments so as to enable the petitioners to be registered as proprietors of their respective shares. Further that the confirmation of the grant issued by this court cannot be enforced unless the Deputy Registrar of this honourable court is directed to execute necessary sub-division instruments. The applicant has sworn an affidavit in support of the application. She explains

that she is the daughter of the deceased who owned the parcel of land known as Kakamega/Bugina/304 measuring 2.0Ha hereinafter referred to as the suit land. That when she conducted a search on the said parcel of land she noted that one LABAN AMADALO CHAMBAGI had lodged a caution upon it. She further states that though a consent was issued by the Sabatia Land Control Board on 09.02.2011, to date her co-administrator and the respondent herein has declined to sign sub division documents to enable the subdivision. She adds that the respondent has threatened to encroach on her portion and it will only be fair and just if the respondent's actions are restrained for the status quo to be maintained until the necessary transfers are effected.

Determination

4. The application is unopposed. There is proof of service of the hearing notice duly filed. The application was canvassed by way of written submissions duly filed by the applicant. There is no response by either the respondent and/or LABAN AMADALO CHAMBAGI.

5. That being the case this court is convinced that the applicant has taken all the initiatives necessary to comply with directives of this court and that the respondent has declined to sign the relevant documents to facilitate compliance. This court also notes that the confirmation was issued way back in October, 2013 and the difficulties the applicant has had to endure are caused solely by the respondent.

6. The application is therefore found to have merit and the same is allowed in terms of prayers 1 and 2 thereof but with no orders as to costs.

It is so ordered.

Ruling is delivered, dated and signed at Kakamega this 1st day of September 2016

R. N. SITATI

JUDGE

In the presence of;-

.....Mr. Nyikuli for Mr. Kundu (present).....Petitioner/Applicant

.....Absent Petitioner/Respondents

.....Mr. Lagat.....Court Assistant