



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT HOMA BAY**  
**SUCCESSION CAUSE NO.79 OF 2016**  
**(Formerly Ndhiwa SRM's Court Succ. Cause No.48 of 2013)**

**IN THE MATTER OF THE ESTATE OF:**

**CHARLES ODIEMBO ATITO ..... DECEASED**

**AND**

**WASHINGTON OMUGA PESA ..... APPLICANT**

**VERSUS**

**AMOS KINGS OTIENO ..... RESPONDENT**

**RULING**

1. **WASHINGTON OMUGA PESA** has filed this summons seeking annulment of the grant of letters of administration issued to **AMOS KINGS OTIENO** (Respondent) on 11<sup>th</sup> December 2013 on grounds that the proceedings to obtain the grant and the subsequent application for confirmation were defective in substance.

2. In the supporting affidavit, the applicant explains that when Charles Odiembo Atito died on 21<sup>st</sup> June 1998, a grant for letters of administration was properly made to him. However the Respondent had shown an interest in purchasing the land parcel No. **KANYIDOTO/KABURA/462**, which constituted the deceased's estate. The applicant thus sold the land to the respondent after informing the court that he would transfer the land to the respondent during confirmation of grant proceedings. The grant was duly confirmed and the applicant requested that the court do order the land transferred to the Respondent. This was done and the certificate of confirmation transferred the estate to the Respondent.

3. Subsequently the Land Registrar issued a title deed to the Respondent on the basis of the court order whereas the applicant to be registered as proprietor on transmission and transfer by personal representative form did not transfer the title to the respondent.

4. Incidentally there had been a boundary dispute regarding parcel No. **Kanyidoto/Kabura/461** and **462** and the applicant invited the District Land Registrar who then realized the irregularity in the registration of the respondent and therefore deleted the respondent's names and entered the name of **CHARLES ODIEMBO** (Deceased) as the registered proprietor. He says the irregularity was caused by the order and certificate issued by the court, although there is no dispute between him and the respondent.

5. I have perused the application and the documents relating to the process in the lower court. The court

did not issue the grant to the respondent **suo moto** – it was an application by this very applicant who then swore an affidavit dated 2<sup>nd</sup> December 2013 explaining why he wanted the entire estate transferred to the Respondent. Consequently the grant was confirmed in favour of the Respondent.

6. It is not very clear to me what problem the District Land Surveyor had with the court order as no documents by that officer or from the said office were presented to this court to confirm the issue of concern. Curiously – if the Respondent’s name has been removed from the register, should this really be the applicant’s concern or the respondent who had bought the land and been issued with a grant.

7. The title document filed is in the respondent’s name and I do not see any other document suggesting that the title has been cancelled.

8. I fail to comprehend what it is that I should rectify when there is nothing showing that the District Land Registrar has rejected the confirmation in favour of Respondent.

9. I find no merit in the application and it is dismissed.

Delivered and dated this 3<sup>rd</sup> day of **November**, 2016 at Homa Bay

**H.A. OMONDI**

**JUDGE**