



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCC CAUSE NO.422 OF 2002

IN THE MATTER OF THE ESTATE OF THE LATE CHILALI MULINDA (DECEASED)

AND

SAYA CHILALI1ST OBJECTOR/DECEASED

WAFULA CHILALI2ND OBJECTOR/DECEASED

JAFRED WANJALA LYANIAPPLICANT

R U L I N G

1. The application for determination is the chamber summons dated 19/06/2013 brought under Order 24 Rule 3 of the Civil Procedure Rules where the Applicant (JAFRED WANJALA LYANI) seeks for orders:

1. THAT he substitutes the late SAYIA CHILALI who was the 1ST Objector herein.
2. THAT the costs of this application be in the cause.

2. The application is based on the ground that this cause can only be brought to its logical conclusion after this application is granted. It is supported by the by the annexed affidavit of the applicant JARED WANJALA LYANI. He stated that he bought a piece of land from the 1ST Objector out of the parcel of land known as Kakamega/Surungai/583 (see a copy of the sale agreement marked “JW 1”) and that the 1ST Objector died on 24/4/2013 as shown by the copy of the burial permit (“JWL 2”).

3. He claims to have been given a consent by the family of the deceased to substitute the 1ST Objector in this case as they have no interest in his estate as he (1ST objector) disposed of by way of sale his entire share see “JWL 2(a) and 2(b)” copies of the consent and letter from the area Assistant Chief. He depones that he is competent to substitute the 1ST objector in this cause.

4. The application is opposed by AINEA MAKOKHA WERUNGA the Petitioner/Respondent who depones in his replying affidavit dated 25/02/2014 that he wants the application dismissed for incompetence. He depones that the applicant resides in Bungoma County and not Kakamega County as stated in his affidavit. He also claims that the applicant tried to purchase the land in dispute but the 1ST objector’s family refused and refunded him his money as per annexure “AMW – 1”. He maintains that the applicant has no legal capacity to be entertained in this matter as he is not related to the family of the 1ST objector nor does he have letters of administration for the estate of the 1ST objector.

5. Ainea also claims that he obtained an injunction against the applicant (see annexure “AMW-2”) which

was made permanent by this Honourable court (see “AMW-3”). He also claims that the consent attached to applicant’s affidavit is suspect and has not been signed by the entire family of the deceased. In his supplementary affidavit dated 13/05/2014 the applicant who is aware of the injunction against him depones that the matter has not been concluded nor has his interest been determined. He maintains that he has a real interest in this succession cause and should be made a party so that he can articulate his interest to enable the Court reach a fair determination of this matter. He denies being refunded the money he paid for the land and explains that the same was paid to his advocates see annexure “JWC 1”.

6. Parties did not file any submissions but relied on the affidavits on record. The application has been brought under the provisions of Order 24 Rule 3 of the Civil Procedure Rules. It has time and again been held that the Law of Succession Act, Cap 160 Laws of Kenya is self contained and it is only dependent on the Civil Procedure Act and rules made thereunder to the extent only that the Law of Succession Act has permitted. The Law of Succession Act has not imported into itself the general provisions in the Civil Procedure Act and the Rules Rule 63(1) of the Probate and Administration Rules makes reference to some provisions of the Civil Procedure Rules which are imported into the Law of Succession Act. The provisions relied upon by the applicant are not part of the rules mentioned under rule 63(1) of the Probate and Administration Rules. The said provisions relate to death and bankruptcy of parties. In **Nairobi High Court Succession Cause number 1814 of 1996 In the matter of the Estate of JOSEPH MWINGA MWANGAMU (DECEASED)** the Court declined to grant the orders sought therein on the grounds that the provisions upon which the application was premised were not recognized by the Law of Succession Act. This Court holds the same view as the Court in the above cited case and therefore finds no merit in the application made by the applicant.

7. The application is therefore dismissed as it is defective and incompetent. The applicant shall bear the costs of the application.

8. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 3rd day of December 2015.

RUTH N. SITATI

J U D G E

In the presence of:

Miss Wilunda for Mukavale (present) for Applicant

Mr. Munyendo (absent) for Petitioner/Respondent

Mr. Lagat - Court Assistant