

late George Wilfred Ombeva, Rose Esendi Ombeva (the interested party herein), did not avail to the court a grant of letters of administration respecting the estate of her late husband and therefore had no “**locus-standi**” in the matter hence the erroneous issuance of the orders of the 24th April, 2013 which orders directed the court's executive officer to sign transfer forms on behalf of the applicant.

The applicant further contends that the vesting of twenty (20) acres to the interested party who had no “**locus-standi**” was done in excess of the court's jurisdiction resulting in the transmission of a portion of land title No. 5534 to a stranger in a manner contrary to the Succession Law.

It is for all the foregoing reasons that the applicant prays for an order of certiorari while enjoining the Hon. Attorney General and the Chief Magistrate's Court Kitale as the first and second respondents and Rose Esendi Ombeva as the interested party.

The respondents filed their grounds of opposition to the application on 6th May, 2014 through the learned litigation counsel, **Mr. Wabwire**, who also argued the application on their behalf.

The interested party did not appear for the hearing of the application which was argued on behalf of the applicant by the learned counsel, **Mr. Kiarie**.

Having considered the application on the basis of the supporting grounds and those in opposition and in the light of the submissions by both sides, it must first and foremost be noted that an order of certiorari is for purposes of quashing a decision already made by an inferior body exercising quasi-judicial or judicial functions if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or for such like reasons.

Herein, the applicant raises issues with the decision made by the magistrate court on the 24th April, 2013.

The said decision is marked as exhibit “**No. Sno. 3**” and the extracted order as exhibit **No. “SNO. 4”** in the applicant's verifying affidavit.

The decision was made in Kitale CMC Land Case No. 74 of 1999 in which the interested party was the plaintiff/applicant and the applicant, the defendant/respondent.

Apparently, the decision was prompted by decision of the Kaplamai Land disputes Tribunal which was adopted by the court as a judgment and a decree issued on the 29th July, 2003 directing the applicant to take the plaintiff (George Wilfred Ombeva) to the Land Control Board to obtain a title deed since the applicant was the inheritor of her late husband's land.

The decree was issued on 29th July, 2003, long after the applicant and others had obtained letters of administration respecting the estate of her late husband including the land in dispute. It was therefore proper for orders to be obtained against the applicant as one of the administrators of her late husband's estate. However, she was not expected to implement transfer of the estate property prior to the confirmation of the grant issued to her and others and which confirmation would effect a distribution of the estate among all beneficiaries and defendants. It was therefore erroneous for the decree dated 29th July, 2003, to describe the applicant as the inheritor of the land in dispute yet the succession process had not been completed.

In the circumstances, the order made by the court on 24th April, 2013, on the basis of the decree issued on 29th July, 2003, was erroneous and made in excess of jurisdiction since the applicant had no legal capacity to transfer the land in dispute and therefore the Executive Officer of the court could not sign or purport to sign transfer forms on her behalf.

The issuance of a vesting order in favour of the interested party as the widow of the late George Wilfred Ombeva who filed a claim against the applicant in the Land Disputes Tribunal did not have any legal basis for reasons stated hereinabove and most importantly, for reason that the interested party did not demonstrate before the magistrate's court that she was the legal representative of her late husband for

purposes of the material application and order. She did not exhibit any grant of letters of administration respecting her late husband's estate in the magistrate's court and also in this court.

Indeed, the magistrate's court was aware that there was a pending succession cause involving the estate of the applicant's late husband and also that the grant issued to the applicant involved two other administrators thereby requiring that all the three administrators do sign transfer forms if at all they had to do so. In any event, transfer could not be effected prior to the confirmation of the grant and as such the issuance of a vesting order for property which has not been legally distributed following the demise of its legal owner was improper and in excess of jurisdiction.

Consequently, this application is granted in terms of prayer 1 of the Notice of Motion. Each party shall bear own costs of the application.

[Read and signed this 8th day of May, 2014.]

J.R. KARANJA.

JUDGE.