



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT 7 OF 2008

JULIA SHIHORE OKWARO

(Suing as the administrator of the estate of

HENRY OYUNGU OKWARO.....PLAINTFF

VERSUS

PATRICK OKECH ORANGA1ST DEFENDANT

OTWAL ODONGO.....2nd DEFENDANT

RULING

The applicants application dated 1st September 2011 prays for the following relief's:-

- (1) That Benedeta Ogonda Mwalo be joined in this suit as the defendant.**
- (2) That upon granting prayer (1) above parties, be granted leave to amend the pleadings to reflect the name of the new defendant**
- (3) Costs.**

The application is supported by the affidavit of **Benda Agonda Mwalo** sworn on 1st September 2011. The gist of the said applicant is that the applicant is the widow as well as the administratrix of the estate of the late **Mwalo Were** who until his death was the registered proprietor of land parcel Number Kisumu / Kogony / 1222. According to the applicant the land in controversy between the plaintiff and the 1st and 2nd defendants namely Kisumu / Kogony/2785 was lived out of the said Kisumu / Kogony / 1222.

The applicant has demonstrated this by attaching to her affidavit the limited grant of letters of administration issued to her on 8th July 2011 as well as the copy of the green card for land parcel number Kisumu / Kogony / 1222.

The plaintiff has filed a replying affidavit disputing the applicant's application. The substance of her application is that one **Joseph Ndele Olose** is the administrator of the estate of the late **Mwalo Were**. Further she argued that the said parcel of Land Kisumu / Kogony / 1222 has been subdivided into various portions namely 5758, 5759 and 5760.

She equally deponed that the late **Henry Oyungu Okwaro** purchased land parcel number Kisumu / Kogony / 1222 really belonged to **Mwalo Were**.

I have considered the rival affidavits. They raise serious triable issues. These include whether or not land parcel number Kisumu / Kogony / 1222 really belonged to Mwalo Were. Did the late Mwalo Were sold the said parcel of land?. Was the said land ever subdivided into the aforestated portions? Is land parcel number Kisumu /Kogony / 1222 the same as Kisumu / Kogony / 2785? Who is the real administrator of the estate of the later Mwalo Were?

These questions can only be ventilated through a full trial.

For the reasons stated herein I shall allow the application dated 1st September 2011. There is no prejudice that shall be suffered by the rest since they shall have the full liberty of ventilating their case during full trial. The costs of this application shall abide the full trial.

Dated, signed and delivered at Kisumu this 13th day of July 2012

H. K. CHEMITEI

JUDGE

HKC/ao