



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

Succession Cause 39 of 2005

**IN THE MATTER OF THE ESTATE OF HENRY MASESE OBWANGI..... DECEASED**

**AND**

**PETER MOSE AYUGE ..... APPLICANT**

**-VERSUS-**

**JULIUS MACHENGE MASESE ..... RESPONDENT**

**RULING**

1. This matter has a long history, part of which is reflected in this court's ruling dated and delivered on 12<sup>th</sup> May, 2012. What is before court is the Chamber Summons dated 10<sup>th</sup> January, 2012 filed by **Peter Mose Ayuge** seeking an order of this court authorizing the Deputy Registrar or the Executive Officer of this court to sign transfer forms in relation to the property known LR No. B/B/Boburia/1272. The application is premised on 2 grounds on the face thereof, namely that the objectors have refused to sign transfer forms to enable the Land Registrar to effect transfer or facilitate sub-divisions and as a result the applicant is unable to administer the court's ruling dated 12<sup>th</sup> May, 2012.
2. The application is also supported by the applicant's affidavit sworn on 10<sup>th</sup> January, 2012. The deponent says that on the 12<sup>th</sup> May 2011, this court confirmed the grant issued to the applicant herein **Peter Mose Ayuge** wherein the applicant and the objectors were each given 1.4Ha of the deceased's estate being LR No. B/B/Boburia/1272.
3. The application is opposed vide the Replying Affidavit of **Julius Machenge** in which he contends that he was excluded as a beneficiary of the estate of **Masese Ogwagi**. The objector also wants the application dismissed on technical grounds touching on the affidavit and the order/rule under which the same has been brought.
4. I have carefully read the application as filed, the affidavits for and against it and the annexures to the affidavits. I have also read all the pleadings on this file and on P & A Succession Cause No. 211 of 2004.
5. Based on all the above, I am of the humble view that the objection this application has no basis. A few days to the hearing of the application, the objectors filed another summons for revocation of grant,

seeking to revoke and/or annul the grant of letters of administration granted to the applicant on 12<sup>th</sup> May, 2011. The objectors wanted the application heard before the instant application but their plea to be given priority hearing over the instant application was refused. It does appear to me that the objectors have been determined to ensure that the applicant does not proceed to complete the process of administration of the deceased's estate. I find and hold that the actions of the objectors amount to abuse of the court process.

6. The courts have held that it is an abuse of court process to try and obtain orders similar to those sought in an earlier case, or when there is failure to disclose all material facts. See **Commercial Exchange Ltd & Another –vs- Barclays Bank of Kenya Ltd (1996) LLR 2194 (CAK)**. Because of the propensity of parties to abuse court process, courts are urged to be on guard in ensuring that court process is not abused. This was the holding in the case of **Fish and Meat Ltd & Others –vs- Delphis Bank Ltd Kakamega HCCC No. 136 of 1994** and **National Bank of Kenya Ltd –vs- John Odawa Oluoch (1997) LLR 5428 (HCK)**.

7. In the instant case, the objectors have been heard on their preliminary objection dated 17<sup>th</sup> July, 2007 whose import was to restrain the applicant herein from having the grant of Letters of Administration issued to him. Then by the application dated 9<sup>th</sup> July 2009, the objectors again sought to stop the applicant herein from proceeding with his application dated 17<sup>th</sup> November, 2005 seeking confirmation of grant of Letters of Administration. That application dated 9<sup>th</sup> July 2009 was heard and dismissed. From all this history, I find the objector to be a vexatious litigant and one who is after abusing the due process of court by filing a multiplicity of applications seeking similar orders over and over again.

8. In the final analysis, I am persuaded that the instant application is meritorious. I have considered the objection raised thereto on behalf of the objectors, but find the same to be more technicalities which do not override the provisions of Article 159 (2) (d) of the Constitution. Accordingly the application is allowed in terms of prayer (i) thereof. The Deputy Registrar of the High Court be and is hereby duly authorized to sign transfer forms in relation to the property known as **B/B/Boburia/1272**. Costs of the application shall be in the cause.

9. Lastly, the delay in delivering this ruling/judgment is very much regretted. At the time it was due, I was engaged in hearing and determining the more than 125 boundary dispute cases against the Independent Electoral and Boundaries Commission. Judgment in the said cases was delivered by the 5-Judge Bench on 9<sup>th</sup> July 2012.

10. It is so ordered.

**Ruling dated and delivered at Kisii this 7<sup>th</sup> day of September, 2012.**

**RUTH NEKOYE SITATI**

**JUDGE**

**In the presence of**

Peter Mose Ayuge (P.I.P) for petitioner/applicant

M/s Abobo & Co. (absent) for objector/respondent

Mr. Bibu - Court Clerk

**RUTH NEKOYE SITATI**

**JUDGE**

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