



REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 55 of 1984

IN THE MATTER OF THE ESTATE OF JOSEPH AKUNDA - DECEASED

BETWEEN

OBADIA SYLVESTER ONG'ANDAPETITIONER

AND

PETRONILA MURANDATSI MALOVA APPLICANT

AND

ANNAH AKKHAYATI OMILEMATO BE ENJOINED AS PARTY

RULING

The application by way of Chamber Summons dated 16.3.12 applies for orders that:-

- “1. This application be certified urgent and be heard on priority.
2. At the ex parte level, the orders prayed hereinafter in paragraph 4,5,6 & be granted interim basis pending inter parties hearing.
3. One ANNAH AKKHAYATI OMILEMA be enjoined to the proceedings to defend (sic).
4. The proceedings in the Principal Magistrate’s Court Maseno Succession Cause No. 28 of 2011 be stayed.
5. The petitioner and any other person claiming under him be barred from carrying out any development and or any activities on the land parcel E.BUNYORE/EBUNANGWE/2275 accessing or remaining thereon.
6. All other transactions at the lands office over title known as E.BUNYORE/EBUNANGWE/2275 be and are prohibited.
7. The orders herein granted on interim basis be extended upon inter parties hearing until the final determination of this matter.
8. Copies of the orders herein granted be served on the Chief of the area where land parcel E.BUNYORE/EBUNANGWE/2275 for information and for compliance if need arises.

9. Costs do abide the outcome.”

The application is supported by the affidavit of the applicant PETRINILA MURANDATSI MALOVA. According to the said affidavit, the deceased, JOSEPH AKUNDA who was the registered owner of L.P. NO. BUNYORE/EBUNANGWE/2275 and L.P. NO. BUNYORE/ EBUNANGWE/2095 was the father to her late husband MESHACK MALOVA AKUNDA. The applicant accuses the Petitioner/respondent, SYLVESTER ONGANDA of fraudulently obtaining the grant of letters of Administration herein and selling L.P. NO. BUNYORE/EBUNANGWE/2275 to one DEINA UNDISA REUBEN. That the said DEINA UNDISA REUBEN passed away and one ANNAH AKHAYATI OMWENA obtained grant of letters of Administration in the estate of DEINAH UNDISA REUBEN and is now trying to register herself as the owner of the said parcel of land through transmission.

In opposition to the application, the respondent, OBADIA SYLVESTER ONGANDA swore an affidavit in reply on 18.7.12. The respondent’s stand is that he is not in possession of L.P.NO. BUNYORE/EBUNANGWE/2275 nor is he a party to the proceedings in Maseno PMC Succession Cause.

The respondent’s contention is that he entered into a sale agreement with the late **JOSEPH AKUNDA** to purchase L.P. NO. BUNYORE/EBUNANGWE/2275. That the purchase price was to be paid in instalments but the said **JOSEPH AKUNDA** passed away before the respondent had completed making the payments. The respondent then continued paying the instalments through one PHILIP ANDAI, a son to the vendor. The respondent finished paying the instalments and also purchased the remaining portion of the said piece of land with the knowledge of the beneficiaries of the estate of JOSEPH AKUNDA.

The said PHILIP ANDAI then gave the respondent the go ahead to file the Succession proceedings herein. The respondent subsequently sold L.P. NO. BUNYORE/EBUNANGWE/2275 to one DEINAUNDISA REUBEN, now deceased, who was survived by ANNA AKHAYATI OMLEMA who has filed Maseno PM’s court Succession 28/11.

The said ANNA AKHAYAT OMLEMA whom the instant application seeks to be enjoined as a party filed the grounds of Opposition dated 17.7.12 in opposition to the application. The grounds of opposition term the application as defective and an abuse of the process of the court. The grounds of opposition have raised other matters of fact which are not supported by any affidavit evidence by the said ANNA AKHAYATI OMLEMA.

Mr. Musiega advocate appeared for the applicant while Mr. Mukele advocate appeared for the respondent. Mr. Chitwa advocate appeared for ANNAH AKHAYATI OMLEMA.

I have considered the application, the reply to the same and taken into account the submissions made by the counsels.

It is not in dispute that L. P. NO. BUNYORE/EBUNANGWE/2275 formed part of the estate of the late JOSEPH AKUNDA. It is also not in dispute that the said property has since changed hands through the sale of the same following the confirmation of the grant of Letters of Administration issued herein to the Petitioner/respondent OBADIA SYLVESTER ONG’ANDA.

Section 93(1) of the law of Succession Act Cap 160 Laws of Kenya therefore comes into play. The said section provides as follows:-

“A transfer of any interest immovable or movable property made to a purchaser either before or after he commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”

That being the law, the application fails with costs.

Dated, delivered and signed at Kakamega this 11th day of October, 2012

B. THURANIRA JADEN
J U D G E