



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC. 441 OF 2010**

**SAMMY ONCHURU NYARANGI.....PLAINTIFF**

**V E R S U S**

**DENIS MUMO MWONGELA.....DEFENDANT**

**R U L I N G**

There appears to be no dispute that the deceased James Onyiego Nyarangi was the allottee of all that land known as L.R. No. 13874 of I.R. No. 88270 Karen Plains measuring about 2.288 Hectares. Following his death on 4<sup>th</sup> May 1991 his widow Margaret Nyarangi and Beckie Boyani Nyarangi became the administrators of the estate (“Son 1”). Margaret was subsequently registered (“Son 2”) as the proprietor of the property to hold in trust for the beneficiaries of the estate. She died on 25<sup>th</sup> October 2008. The Plaintiff on 22<sup>nd</sup> September brought this suit claiming that sometimes in April 2010 the Defendant came onto the land claiming it had been sold to him by William Salala and Joseph Kipsan. The Defendant then fenced the same and has since brought building materials thereon intending to commence construction. The Plaintiff claimed this was private property in respect of which the Defendant had no authority or legal basis to interfere with. He sought a permanent injunction. With the suit was filed an application under Order 39 rules 1, 2, 2A, 3 and 9 for a temporary injunction.

The Defendant denied that he has entered the land as alleged, or at all. He stated that he occupies his own land L.R. No. L at Karen Plains which is separated by a road measuring 6 metres from the Plaintiff’s land. He stated that he got his land following an allocation by Commissioner of Lands (“DMM1”) on 5<sup>th</sup> July 1999. He denied that he bought the land from either William Salala or Joseph Kipsan, and annexed receipts (“DMM 2”) and “DMM 3”) to show he pays land rents for the parcel.

The Defendant then raised the issue that the suit was incompetent as the Plaintiff lacked the capacity to sue as he was not a holder of letters of administration in regard to the estate of Margaret. In response, the Plaintiff’s affidavits annexed a limited grant issued to him and Beckie on 4<sup>th</sup> November 2008 following Margaret’s death. This limited grant was specific in the sense that it was:-

*“Limited to the purpose only of WITHDRAWAL OF MONEY IN NATIONAL BANK OF KENYA A/C NO. 012430307220, TIMES TOWERS BRANCH THE SUM OF SHS. 793,455 CHEQUE PAYABLE TO NAIROBI HOSPITAL and until further representation is granted .....*”

Section 54 of the Law of Succession Act (Cap. 160) allows for the issuance of limited grants by the court. Under rule 14 of the Fifth Schedule of the Act such a grant may be limited to commencement of a suit or representing a deceased in an ongoing suit. The present grant was limited to the withdrawal of the money and cannot, therefore, be the basis of this suit.

In the supplementary affidavit by the Plaintiff he annexed (“Son 2”) a grant of letters of administration purportedly issued on 3<sup>rd</sup> March 2009 to him and Beckie following the death of James Onyiego Nyarangi. His own evidence contained in the supporting affidavit had shown that following the death of James Onyiego Nyarangi the Court did on 28<sup>th</sup> January 1999 issue letters to Margaret and Beckie which were confirmed on 12<sup>th</sup> July 1999 subsequent to which Margaret became the registered proprietor of the suit land. There would be no way that for the same James Onyiego Nyarangi letters did on 3<sup>rd</sup> March 2009 issue to the Plaintiff. In any case, now that Margaret had passed on and she was the owner of the land it was incumbent upon the Plaintiff to seek and obtain letters to administer her estate as a basis for bringing the present suit in regard to the land. This is what the law under section 82 (a) of the Act, as explained in the decision of **Troustik Union International & Another –Vs- Mrs. Alice Mbeyu and Another, Civil Appeal No. 145 of 1990 at Nairobi**, is all about: that where the deceased died while being the registered owner of a parcel of land and no letters of administration have been issued, nobody has the capacity to bring a suit concerning the land.

Even assuming that the court indeed issued the grant to the Plaintiff as alleged, the same related to the estate of James Onyiego Nyarangi and not Margaret who was the owner of the land when she died.

Sections 1A, 1B and 3A of the Civil Procedure Act or Article 159 (2) (d) of the Constitution would not be able to assist the Plaintiff. This is because the court does not have the jurisdiction to grant the prayers sought.

The result is that the suit and application are incompetent and are struck out with costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF MARCH 2011**

**A. O. MUCHELULE**

**J U D G E**