



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

Succession Cause 10 of 2002

IN THE MATTER OF THE ESTATE OF JOPSEPH SIANGU DECEASED

AND

DANIEL MOSE NCHORE.....PETITIONER/APPL.

VERSUS

ONDARA NCHORE.....OBJECTOR/RESP.

RULING

The grant in this Succession Cause was issued to the petitioner/applicant on 27/2/2002 and subsequently the deceased's land parcel of land *no, Matutu Settlement Scheme/153* was registered into his name as an absolute proprietor. The confirmation was on 24/9/2002.

The applicant subdivided the land into two *Matutu Settlement scheme/633 and 634*.

The objector/respondent went to the *Borabu Division Land Disputes Tribunal* claiming 5 acres of parcel 153 and he was successful. The Tribunal's decision was delivered on 6/6/2002 and was adopted by the Keroka Resident Magistrate's Court on 22/10/2002.

Before this court there is an application by the respondent to have the grant confirmed to the applicant to be revoked. The application was filed on 17/7/2008 and has not been heard.

Presently, the applicant seeks under *Order 39 rules 1,2,3 8A and 9 to the Civil Procedure Rules and sections 3 and 3A of the Civil Procedure Act* to have the respondent restrained from demolishing the fence between them in *parcel 633* and also to stop the respondent from trespassing onto or ploughing the land occupied by the applicant until the suit is heard and finalized. The applicant stated that parcel 633 measures 5.1 Hectares and that it is being illegally occupied by the respondent. The occupation resulted from the Tribunal's decision that awarded him 5 acres. The applicant claims that neither the Tribunal nor the subordinate court had jurisdiction to entertain the respondent's claim to the land.

The respondent is occupying part of 633 and the application seeks to stop trespass. The act being complained of has already taken place and can only be redressed by a mandatory injunction. The injunction being sought is prohibitory in nature.

I ask that the parties do set down the application for revocation for hearing and to leave these many sideshows.

In the meantime, the application is dismissed. The respondent did not attend and shall therefore not get costs.

Dated at **Kisii** this 7th day of October,2009

A.O.MUCHELULE

JUDGE

7/10/2009

Before Hon. A.O.Muchelule-J

Court clerk-Mongare

Mr. Mokuu –present

Court: Ruling in open court

A.O.MUCHELULE

JUDGE

7/10/2009