



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 120 of 2001

IN THE MATTER OF THE ESTATE OF BENJAMIN ODUNGA OTIENO –
DECEASED
BETWEEN
JOHN RODGERS MIDEGA PETITIONER/ APPLICANT
VERSUS
LAND REGISTRAR KAKAMEGA RESPONDENT

RULING

By a Notice of Motion dated 20th August, 2008 the applicant is seeking an order of Mandamus to compel the Kakamega District Land Registrar to register the Petitioner as owner of **Plot No. BUTSOTSO/SHIKOTI/9088**.

The Applicant is the Administrator of the estate of the late Benjamin Odunga Otieno. The deceased was the registered owner of **Plot No. Butso/ Shikoti/304**. The Applicant contends that the property was illegally sub-divided and created **Plot No. Butso/ Shikoti/9088**.

The Applicant contends that his registration as the Administrator of the deceased's estate was cancelled on the ground that he had not surrendered the original title deed yet the title deed was surrendered on 3/4/2001.

The record shows that the deceased was a judgement debtor before he died, vide Kakamega Chief Magistrate Miscellaneous Case No. 67 of 2000. The Creditors in that case were awarded some portions of the suit property, Butso/ Shikoti/304 and this is the main reason why the land was sub-divided.

The record also shows that there are other several respondents other than the Land Registrar, Kakamega. These include Rose Maloba Etemesi, Salome Nyasili, Jemimah Rapando, James Okuomi and Jonathan Munialo Shisanya.

Order LIII (1) (i) requires that before an application for an order of Mandamus, Prohibition or Certiorari is made, leave should be granted by the court. Further, **Order LIII (3) (1)** requires that the application for such order must be served on all persons directly affected should the orders being sought be granted.

There is no evidence that the applicant was granted leave to file the current application for Judicial Review. There is also no evidence in form of affidavit of service that all the above named respondents who will be affected by the orders being sought were served. I do find that the application herein is incompetent as no leave to file the same was granted to the applicant. The application lacks merit and

the same is dismissed. There shall be no order as to costs.

Delivered, dated and signed at Kakamega this 1st day of October, 2009.

SAID J. CHITEMBWE

J U D G E