

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 410 OF 2010

IN THE MATTER OF THE ESTATE OF NAKWEYA BUNGÁYA (DECEASED)

RULING

1. This cause relates to the estate of Nakweya Bungáya, who died on 28th November 1992. A letter from the Chief of Shisele Location, dated 22nd June 2010, indicates that the deceased was survived by two children, a son and a daughter, Vincent Bungáya Nakweya and Flora Masitsa Nakweya. The deceased is said to have died possessed of Idakho/Shilulu/636.

2. Representation to the estate of the deceased was sought by Vincent Bungáya Nakweya, in his capacity as son of the deceased. He listed himself, and Flora Masitsa Nakweya, as the survivors of the deceased, and listed Idakho/Shikulu/636 as the asset of the estate. Vincent Bubusi Muliakha is listed as a liability of the estate. Letters of administration intestate were made to him on 23rd August 2010, and a grant duly issued, dated 24th August 2010. I shall hereafter refer to him as administrator. The grant was confirmed on 26th July 2011, and Idakho/Shikulu/636 was devolved wholly upon the creditor, Vincent Bubusi Muliakha.

3. What I am called upon to determine is the summons dated 29th July 2016, seeking revocation of the grant made to the administrator on 26th July 2011. The application also seeks cancellation of the transmission of the estate asset to Vincent Bubusi Muliakha, and that the same reverts to registration in the name of the deceased. The administrator is accused of having obtained the grant fraudulently by concealing material facts from the court, by not disclosing other survivors of the deceased.

4. In the affidavit, sworn by the applicant, in support of the application, it is averred that the applicant was a son of the deceased, while the administrator was his brother. He avers that the deceased had three assets, being Idakho/Shikulu/636, 1006 and 1007. He was said to have had seven children, being four sons and three daughters. The sons were said to be Vincent Bungáya Nakweya, Desterious Nakweya, the late Dennis Khayumbi Nakweya and the late Josphat Imungu Nakweya. The daughters are said to be Marcella Nakweya, Flora Nakweya and Pamela Nakweya. Two individuals are also listed as liabilities of the estate, Benjamin Khayumbi and James Khayumbi. The applicant complains that representation to the estate of the deceased was obtained without their consent being sought. The administrator is also accused of not disclosing all the survivors of the deceased, apart from himself and one of the daughters. He is accused too of not disclosing that the deceased had sold part of the estate to Benjamin Khayumbi and James Khayumbi, who had taken possession and had been in peaceful occupation of the property since the 1970's. He is accused of causing Idakho/Shikulu/636 to be devolved upon a third party, who had since embarked on wanton destruction of the property.

5. The summons for revocation was not responded to by the administrator, despite the same coming up several times. I shall take it that what is averred in the affidavit, sworn in support of it, is the gospel truth. As it is not opposed, I shall grant it, the application dated 29th July 2016, in its entirety. Let the matter be mentioned after forty-five days, for appointment of fresh administrators. Let all the survivors of the deceased, that is to say the sons and daughters of the deceased, and the sons and daughters of any sons and daughters of the deceased who have since died, attend court on the date appointed for mention. I shall allocate a date for mention for that purpose at the delivery of this ruling.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 22ND DAY OF MAY, 2020

W. MUSYOKA

JUDGE