

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

SUCCESSION CAUSE NO. 43 OF 2012

IN THE MATTER OF THE ESTATE OF DAUDI CHOGO MAKAMA.....DECEASED

AND

SAMUEL ASHEMA CHOGO.....PETITIONER

JUSTUS SIMIYU WEPUKHULU.....OBJECTOR

JUDGMENT

The deceased Daudi Chogo Makama died on 16.4.2004 leaving behind the widow Loida Muhonja, Sons Samwel Ashema Chogo (1st Petitioner) John Eregwa and daughters Alice Migide, Jane Mwanza and Josphat Lijodi. His only asset was Land Parcel No. E. Bukudu/N. Nalondo/2276 measuring 0.95HA as per the certificate of Search issued on 19.9.2011. the petitioner Samwel Ashema Chogo 's duty appends for Letters of Administration indicating the said asset and Joshua Simiyu the objector as a liability. The petitioner then filed an application dated 31.7.2012 for summons for confirmation of grant.

The objector Justus Simiyu Wepukhulu filed an affidavit of protest to the confirmation as the grant dated 9.8.2014. His main objection was that he was a purchaser of land and therefore a liability which fact had not been noted as the land has now been registered in the name of the Petitioner.

By consent the objection was disposed of by viva voce evidence;

Ow1 was the objector Justus Simiyu Wepukhulu and he stated he is son of Daudi Chogo and he has interest in deceased property and bought 1 acre of land from Josphat Lijoodi and Loida Muhonja also sold one acre and they made an agreement he paid all the money in 2010. He stated that as the plot was same he accepted to take 0.55HA and surveyor report shows it was 2½ acres and he was given 1½ and he paid Kshs.280,000/=.

Ow2 Josephat Lijoodi Chogo testified that he knew the petitioner and Ow1 and that he sold land to Justus in 2009 measuring approximately 2 acres and he paid purchase price.

Ow3 Loida Muhonja testified that she knew petitioner and that she sold Justus Simiyu land measuring 2 acres and he paid and that he request he be given his land. Pw1 Samwel AshemaChogo testified that he is the petitioner and deceased was his father and had one wife and he had 8 children and he filed this petition. He admitted the objector bought the land and that he should wait until the dependants get the shares.

From the evidence of the objector and the Petitioner, it is clear that the objector bought the parcel of land. He is therefore a liability to be noted in the estate. The court finds that he bought land and that he should be provided for in the distribution as a purchaser. The court directs that the petitioner do file a mode of distribution of the estate including the objector as a purchaser.

Dated and Delivered at BUNGOMA this 6th day of August, 2019.

S.N.RIECHI

JUDGE