



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 388 OF 2006

IN THE MATTER OF THE ESTATE OF ALEXANDER AMBETSA OLUMBATATIA (DECEASED)

RULING

1. This matter relates to the estate of a person known as Alexander Ambetsa Olumatatia, who died on 20th June 1988. A letter from the Assistant Chief of Ingotse Sub-Location, dated 15th May 2006, indicates that he died possessed of a property known as Butsoto/Ingotse/610. The letter states the rightful beneficiaries to be John Malenya Wambetsa and Daniel Inyangala Ambetsa, but without indicating how the two were related to the deceased.

2. Representation to the estate was sought in a petition filed herein on 18th July 2006 by John Malenya Wambetsa and Daniel Inyangala Ambetsa, who indicated themselves to be the survivors of the deceased, but without indicating whether they were sons or not of the deceased. Letters of administration intestate was made to them on 8th November 2006, and a grant was issued to them date 26th February 2007. Their grant was confirmed on 8th December 2010, on an application lodged herein on 11th June 2010, the estate was shared out between the two administrators, John Malenya Wambetsa and Daniel Inyangala Ambetsa, and a Josphat Otinga, who was described in the application as a purchaser. A certificate of confirmation of grant in those terms issued, dated 20th December 2010.

3. There are two pending applications, dated 15th February 2019 and 6th May 2019, each filed by either administrator. The two applications are what is up for determination, and the subject of this ruling. The application dated 15th February 2019 is brought at the instance of John Malenya Wambetsa. He would like the court to order the Deputy Registrar to sign Land Control forms on behalf of Daniel Inyangala and Josphat Otinga who are said to have refused to sign the relevant documents. He complains that their lack of cooperation has delayed completion of administration. The application dated 6th May 2019 is brought at the instance of Daniel Inyangala. He would like a restriction that had been placed on the title in 2009 by a Donald Lubembe to be removed. The said Donald Lubembe is said to be a son of John Malenya Wambetsa.

4. I note that the grant herein was confirmed in 2010. The estate has not been distributed to date. The law, at section 83 of the Law of Succession Act, Cap 160, Laws of Kenya, envisages that completion of administration should happen within six months after the confirmation of the grant. The relevant provision is section 83(g), which states as follows:

“83. Duties of personal representatives

Personal representatives shall have the following duties—

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;

(h) ...

(i) ...”

5. It would appear that in this case some eight years or so have elapsed since confirmation of the grant, yet administration of the estate has not been concluded through distribution of the assets in terms of the orders made by the court at confirmation of the grant. It would appear that the two administrators have not been cooperating or working together towards completing administration of the estate by distributing the estate in terms of the confirmation orders, and it would appear too that there are restrictions registered against the title which have impeded the distribution.

6. To facilitate completion of the administration of the estate and distribution thereof, I shall grant the two applications and make the following orders:

(a) That the land registrar responsible for Kakamega County is hereby directed to remove the restriction registered against the title in Butsotso/Ingotse/610 on 8th April 2009;

(b) That should either of the administrators refuse to endorse the relevant Land Control Board forms in respect of the subdivision of Butsotso/Ingotse/610 in compliance with the conformation orders made herein on 8th December 2010, the Deputy Registrar shall sign the relevant forms and documents to facilitate compliance with the said confirmation orders of 8th December 2010; and

(c) That there shall be no order as to costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 27TH DAY OF SEPTEMBER 2019

W. MUSYOKA

JUDGE