



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
FAMILY DIVISION
SUCCESSION CAUSE NO. 314 OF 2008

BETWEEN

**IN THE MATTER OF THE ESTATE OF HOSHUA A. VISAHO ALIAS JOSHUA S. VISAHO
.....DECEASED**

AND

TATAYO M. MATUMA.....PETITIONER

RULING

Introduction

1. This matter involves the estate of Joshuah A. Visaho alias Joshua S. Visaho, deceased who died intestate on 05.10.1990 and left behind Land Parcel No. Kakamega/Shiakungu/738 which measures 1.3Ha. The deceased was survived by Tatayo Mbisawi Matuma the Petitioner herein. After Tatayo's death Peter Imbayi Bisaho took over the administration of the deceased's estate vide Kakamega High Court Succession Cause No. 224 of 2009.

The Objection

2. These proceedings were commenced in 2008 and have come up for hearing on a number of occasions which included 18.07.2017 when Mr. Javan J. Mukavale advocate was ready to proceed with objection proceedings on behalf of the Objector/Applicant Alice Khamali Shikami. Just after Mr. Mukavale had given his opening address, Mr. Manyoni for the petitioner objected to Mr. Mukavale conducting the case on behalf of the objector on grounds that he (Mr. Mukavale) is the one who drew the alleged sale agreement between the objector and Tatayo Mbisawo Matuma.

3. The objection was opposed by Mr. Mukavale on the ground that counsel for the petitioner had all along been supplied with the documents and that at no time prior to 18.7.2017 had Mr. Manyoni raised the objection. Mr. Mukavale further submitted that should the court find it appropriate to allow the objection, then he would be ready to testify on behalf of his client. He admitted to having drawn the agreement of sale.

4. In reply Mr. Manyoni submitted that on all previous occasions Mr. Mukavale's assistant or some other counsel had appeared for the plaintiff and that in the circumstances, it had not become necessary to object to Mr. Mukavale personally conducting the matter on behalf of the plaintiff.

Determination

5. After carefully considering the submissions and taking into account the fact that Mr. J.J. Mukavale Advocate indeed drew the agreement, it is not lost to this court that Mr. Mukavale is a potential witness for the plaintiff since there is no let up in the hard positions taken by the rival parties. For the above reason, I uphold the objection and rule that Mr. J.J. Mukavale Advocate shall not personally conduct this case on behalf of the plaintiff.

It is so ordered.

Ruling delivered, dated and signed in open court at Kakamega this 26th day of July, 2017

RUTH N. SITATI

JUDGE

In the presence of :-

.....Mrs. Muleshe holding brief for Mr. Mukavalefor plaintiff/Objector

.....Mr. Manyoni.....for Defendant/Petitioner

.....Polycap.....Court Assistant