



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

SUCCESSION CAUSE NO. 106 OF 1991.

**IN THE MATTER OF THE ESTATE OF JAPHULED KAKAI
MURANDA ::::::::::::::::::::::::::::::::::::::: DECEASED**

WALTER ANGATIA

**FRANCIS UNDUNDE MASEVE :::::::::::::::::::::::::::::::
OBJECTORS.**

VERSUS

RODAH NANYAMA KAKAI

**JOSEPH KAKAI MANDILA :::::::::::::::::::::::
RESPONDENTS.**

R U L I N G.

1. The court is faced with 2 applications for revocation of grants namely;-One by Walter Juphud Angatia dated 23/8/2014 and- another by Francis Ndunde Museve dated 29th February, 2016 which were heard together by way of viva voce evidence.

2. The first objector also has chamber summons dated 24th August, 2014 seeking revocation of grant of 2nd April, 2014 on the grounds:-

- That the petitioner is selling off the land parcel numbers NDIVISI/MUCH/1620 and KAKAMEGA/MATSAKHA/189;

-That the petitioner left out the applicant from among those entitled to share in the estate of the deceased herein;

-That the applicant is the biological son of the deceased herein;

-That the petitioner concealed from court a material fact to the effect that the applicant WILLIAM BARASA MURANDA, MOSES KAKAI MURANDA and herself are the only ones entitled to share the estate of the deceased constituting land parcel Nos. NDIVISI/MUCH/1620 and KAKAMEGA.MATSAKHA/189 because the petitioner is the widow and the rest in this paragraph are sons of the deceased herein;

-That it is in the interest of justice that the orders sought above be granted to enhance fair;

-That ANTHONY TAWAYI WAMUKOTA, JESSIE WEKESA WESONGA and EVERLYNE N. LUMBASI are strangers and whereas WAFULA MURANDA and FRED MURANDA are grandchildren of the deceased;

-That it is in the interest of justice that the orders sought above be granted to enhance fair succession to the estate of the deceased herein.

-On the face of the application. He has also filed an affidavit in support to his application sworn on 28th August, 2014.

3. The second applicant Francis Ndunde Museve lodged Chamber Summons dated 29th February, 2016 seeking the orders that:-

(i) Title deeds certificate of Kakamega/Matsakho/189 issued for the first petitioner/Respondent Rodah Nanyama Kakai and 2nd Respondent Joseph Kakai Mandila be revoked.

(i) The same application on the grounds on the face of the Chamber Summons namely:-

(ii) That the parcel of land known as KAKAMEGA/MATSAKHA/189 which was registered in the names of the deceased JAPHULET KAKAI MURANDA was 1.90 hectares equivalent to 4.75 acres;

(iii) That I was one of the purchasers/beneficiary in this land;

(iv) That on around 20th day of December, 2010 the applicant/Objector purchased 0.20 hectares equivalent to 0.5 acreage from this parcel of land KAKAMEGA/MATSAKHA/189 from the 1st petitioner/respondent and the remaining land 4.25 hectares remained to the petitioner/respondent;

(v) That the applicant/Objector paid Ksh. 60,000/= and the balance of Ksh. 25,000/= paid in statement to the Makos Surveys Services Ksh. 27,200/= to support and stamp duties;

(vi) That the applicant/objector paid extra amount including paying to the advocate in order to complete succession and to the Land Registrar;

(vii) That the 1st petitioner/respondent has been engaging more cases to this succession proceeding, avoiding me not to get my shares;

(viii) That the 2nd respondent has been applying the shares on the same succession case but the application has dismissed;

(ix) That the 2nd respondent has produced another civil case No. 30 of 1995 which has no way of proceeding but he has gone to enter or obtained title deed unlawfully/illegally;

(x) That it has made me confused, and feeling painful to the matters;

(xi) That it is essential that this title deed certificate KAKAMEGA/MATSAKHA/189 be revoked and this estate be included to pave way according for proper distribution of the estate to include my name FRANCIS NDUNDE MUSEVE AS A PURCHASER/BENEFICIARY;

(xii) That the 1st petition/respondent and 2nd respondent has ignored neglected or denial to include or give the applicant objectors his shares yet they know the matters.

4. The same is further supported by his affidavit sworn on 29th August, 2014 and the attached documents. The respondents did not file replies to the same nor attend court for hearing of the same.

5. On 20th June, 2016, the court gave directions to the effect that the same applications to be heard by way of viva voce evidence. The matter proceeded on 26th September, 2016 in absence of the petitioners/respondents as they failed to attend court despite service of hearing notice upon themselves.

6. The 2 applicants were heard together. The first applicant testified that he is the son of the deceased and he was omitted in the petition and in distribution of his father's estate and thus seeks to be included in grant and be given share of his father's estate.

7. The 2nd objector/applicant testified that he bought part of the estate property namely ½ acre at Ksh. 80,000/= from parcel No. Kakamega/Matsakha/ 189. He had an agreement dated 20th December, 2010 in which he bought ½ acre from the petitioner.

8. However, the Land Kakamega/Matsakha/189 is in the names of Joseph Kakai Mandila who is not a party in the instant matter. It is stated that he got land via Kakamega HC Succ. 30/1995. The only parcel of Land of the deceased in the petitioners' name is NDISISI/MUCH/1620.

9. What emerges in the instant matter is that for 1st objector can only get share in parcel 1620 above which is in the names of the respondent. Parcel no 189 has already gone to a non-party. The 1st applicant can sue Roda the first petitioner, the registered person holding 189 and any other person involved in the alleged fraud. The matter has to be taken to Environment and Land Court.

10. As for 1620, the applicant is entitled to an equal share with the survivors of the deceased.

11. As for the 2nd objector/ applicant, his application is misconceived as he is not a dependent in terms of the provisions of Section 39 of Cap 60 L.O.K nor a person entitled to grant under section 66 of Cap 160. He was buying land from Roda Wanyama Kakai, petitioner who had no capacity to sell the estate of deceased herein.

12. In any event the parcel of land has moved to a third party who got it via a different Succession Cause No. 30/95. His remedy is to sue Rodah Wanyama Kaikai in ELC court to recover his money. If he feels he can recover land, he can include the registered owner of 189.

13. The court thus dismisses chamber summons dated 29th February, 2016 with no orders as to costs and grants application dated 24/8/2014 in the following terms; He has to file and serve:

- *Affidavit of proposed distribution to enable court rectify grant;*

- *Procure Search certificates of both parcels of lands forming the estate of the deceased;*

- *The grant will be rectified to include 2 administrators who are a co-administrator namely Rodah Wanyama Kakai and Japhuled Kakai Muranda to enable them pursue recovery of parcel 189 and distribution of the deceased estate.*

SIGNED, DATED and DELIVERED this 12TH day of **OCTOBER**, 2016.

C. KARIUKI.

JUDGE.

In the presence of:-

..... **for the Applicant/Objector.**

..... **1st petitioner/Respondent.**

..... **Court Assistant.**