



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA.**

**SUCCESSION CAUSE NO. 263 OF 1995.**

**IN THE MATTER OF THE ESTATE OF MATAYO ORYAMA KABEYI A.K.A MATHAYO  
KAVEYI (DECEASED)**

**AND**

**KALORI WASHIKU MUBATSI (DCD) ::::::::::::::: PETITIONER.**

**AND**

**NICHOLAS KABEI OKELLO ::::::::::::::: PETITIONER/RESPONDENT.**

**VERSUS**

**JANEROSE ANYANGO WASHIKU ::::::::::::::: OBJECTOR/APPLICANT.**

**RULING**

**INTRODUCTION.**

1. The deceased herein MATAYO ORYAMA KABEYI alias MATHAYO KAVEYI died intestate on 25<sup>th</sup> December, 1970. An amended grant was issued to JANEROSE ANYANGO WASHIKU on the 15<sup>th</sup> March, 2011.

**The application**

2. She has filed a summons for confirmation of the grant dated 18<sup>th</sup> May, 2011 on the grounds that objection proceedings were concluded and a grant of letters of administration intestate of the estate of the deceased issued to her. Her application is supported by her annexed affidavit of the same date. She depones therein that the deceased who had two sons namely Samuel Okelo Mumbatsi and Kalori Washiku Mumbatsi gave out his two parcels of land to the sons. Samuel Okelo Mubatsi was given L.R. NO. NORTH WANGA/MAYONI/213 where he constructed his home and settled, Kalori Washika Mumbatsi was given L.R. NO. NORTH WANGA/MAYONI/209 on which he settled. Samuel Okelo Mumbatsi died and was survived by one son NICHOLAS KABEI OKELLO who inherited his land L.R. NO. NORTH WANGA/MAYONI/213. Kalori Washiku Mubatsi and his children inherited L.R. NO. NORTH WANGA/MAYONI/209.

3. She explains that since the deceased herein died before transferring the above land parcel No. North Wanga/Mayoni/209 to Kalori Washiku Mumbatsi who is her husband, Kalori filed this succession cause and he became the original petitioner. When Kalori died Nicholas Kabei Okello secretly substituted his name in bid to inherit L.R. No. North Wanga/Mayoni/209. She has given her proposal on the distribution

of the deceased's estate specifically L.R. No. N. Wanga/Mayoni/209. She wants the grant confirmed as proposed.

**The response.**

4. NICHOLAS KABEI OKELLO is opposed to the distribution and wants a share of 1.5 acres out of L.R. No. N. Wanga/Mayoni/209. He claims in his replying affidavit dated 17<sup>th</sup> February, 2012 that prior to the deceased's death, the deceased gave him one and a half (1.5) acres from the parcel of land title No. North Wanga/Mayoni/209 despite having been given a share of his late father's land title North Wanga/Mayoni/213.

5. He claims that KALORI WASHIKU MUMBATSI at the time of filing of this succession cause, he included his name as a beneficiary of the deceased's estate as shown in forms P & A 5. He claims to have been in occupation of the one and a half acres of land North Wanga/Mayoni/209 from 1970.

6. He objects to the sharing ratio apportioned by JANE ROSE because it was done without his consent and that she left her out without any share. He wants to be granted the 1.5 acres and claim that he stands to suffer irreparable loss and damage.

**Determination.**

7. The application herein was canvassed orally. From the evidence by the prosecution what is clear is that the deceased herein had two sons and two parcels of land. His sons were Samuel Okelo and Kalori Washiku who were given L.R. No. North Wanga/Mayoni/213 and L.R. No. North Wanga/Mayoni/209 respectively.

8. The two sons have since passed away. Samuel Okelo's parcel of land Mayoni/213 was inherited by his son NICHOLAS KABEI OKELLO while Kalori Washiku's land was inherited by his wife JANEROSE. It seems that Nicholas Kabei Okello's claim that he was given 1 ½ acres by the deceased has been disputed and the same cannot stand.

9. From the evidence, it is the heir of the deceased KALORI WASHIKU MUMBATSI who can inherit from his estate which comprises all that parcel of land known as L.R. No. North Wanga/Mayoni/209. Nicholas was found by this court to have secretly and by giving false information to the court to have substituted his names as an administrator of the deceased's estate herein. This led to Janerose filing for revocation of the said grant and an amended one issued to her. This shows that Nicholas is not trustworthy in his dealings and he wants to take by hook or crook what does not belong to him.

10. Without much ado, I find that the land parcel No. North Wanga/Mayoni/209 be shared out amongst the heirs of Kalori Washiku Mumbatsi as provided for in Janerose's affidavit dated 18<sup>th</sup> May, 2011.

**SIGNED, DATED at KAKAMEGA this 22<sup>ND</sup> day of NOVEMBER, 2016.**

**C. KARIUKI**

**JUDGE.**

**In the presence of:-**

.....N/A..... **for the Petitioner.**

.....SIMIYU..... **for the Objector.**

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