



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
PROBATE AND ADMINISTRATION
SUCCESSION CAUSE NO. 1090 OF 2012

IN THE MATTER OF: THE ESTATE OF ANDREW MUNYASA NAMBAKO (Deceased)

AND

KELESENSIA AKUMU MUNYASAPETITIONER

RULING

The late Andrew Munyasa Nambaka died on 6th November, 1989 aged 83 years. A grant of Letters of Administration was issued to his widow on 22nd January, 2013. The grant was confirmed on 12th November, 2013. The Petitioner is now seeking the revocation of the grant contending that she was duped to sign a consent on distribution which is contrary to her proposed mode of distribution. Parties herein agreed that the only issue is distribution and respective affidavits were filed giving each party's proposal.

I have gone through the Petitioner's affidavit on distribution as well as the submissions by her advocate. I have also gone through the submissions by M/s Gabriel Fwaya, Advocates for the Respondent. The only major difference is that the Petitioner was included in the share of Peter Wambaka Munyasia. She contends that Peter has chased her away. She would like to be given 0.62Hectares. I have also noted that the certificate of confirmation of grant distributed 0.22hectares to St. Kizito Lusumu Catholic Church as well as 0.15hectares to Diocese of Kakamega Shisokhe Parish. The two bodies seem to be the same entity. The St. Kizito church wrote on 18th November, 2013 indicting that its claim is for 0.15 hectares that is contained in the share of the Diocese of Kakamega Shisokhe Parish. The petitioner has also raised the issue of Mulembe Church which bought 0.10 hectares from the deceased.

According to the Respondents, the Petitioner should have life interest. Since the Petitioner is having difficulties in living with Peter and she is also the deceased's dependant, I do find that she is entitled to her own share as an independent unit. I have seen the proposed mode of distribution by the Respondents and I had the advantage of trying to reconcile the parties herein. I do find that lumping the Petitioner together with Peter will not resolve the problem. The beneficiaries should understand that the Petitioner is their mother and she could have in one way or another contributed to the acquisition of the suit land.

The distribution models by both parties is not on equal basis. I will reduce the two large shares of

Maurice Munyasa Mukobi (1.142Ha) and Juma Munyasa (1.142Ha) and give them 1.10Hectares each. I will also give Peter Nambaka Munyasa 1.10Hectares. This will leave a combined total of 0.302Hactares that will constitute the Petitioner's share. In the end, the deceased estate shall be distributed as follows:

Plot Number BUNYALA/SIDIKHO/248

1. Kelesensia Akumu Munyasa 0.302Ha.
2. Corineri Odhiambo Munyasa 0.042Ha
3. John Munyasa 0.942Ha.
4. Maurice Munyasa Mukobi 1.10 Ha
5. Juma Munyasa 1.10 Ha.
6. Saimon Barasa Munyasa 0.572Ha
7. Peter Nambaka Munyasa 1.10 Ha
8. Francis Sakwa Munyasa 0.572 Ha
9. Diocese of Kakamega –Shisokhe Parish 0.15Ha
- 10.Mulembe Church 0.10Ha
- 11.Road 0.22Ha.

In the end, the certificate of confirmed grant issued on 12th November, 2013 is hereby revoked. A fresh certificate shall be issued to the Petitioner on the above terms. I do further order that the share of the Petitioner shall be curbed out from the place where she resides before the other shares of the sons and the buyers are established. Each party to meet his/her own costs.

Dated and signed this 25th day of February, 2015

Said J. Chitembwe

JUDGE

Delivered and countersigned on this 19th day of March 2015

Ruth Sitati

JUDGE