

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

PROBATE AND ADMINISTRATION

SUCCESSION CAUSE NO. 411 OF 1996

IN THE MATTER OF: THE ESTATE OF SAULO NABASA (Deceased)

AND

SIMION OKONGO NYABABA.....PETITIONER

RULING

The application dated 25th November, 2013 seeks to have the certificate of confirmed grant issued herein be revoked. It is supported by the Applicant's affidavit sworn on the same date. The Petitioner/Respondent filed a replying affidavit sworn on 9th April, 2014. parties opted to rely on their pleadings.

The Applicant's main contention is that he bought one acre out of plot number SOUTH KABRAS/CHEMUCHE/602 from the Petitioner. The Applicant's name was included as a liability when the succession cause was filed. Further, when the Petitioner filed an application for the confirmation of the grant, he included the Applicant's name as a liability to the estate. The Applicant has occupied her one acre plot and has built her home.

On his part, the Petitioner denies that the Applicant is a liability to the estate. He maintains that nay purported sale agreement is null and void and that the claim by the Applicant cannot be entertained by the court for want of jurisdiction. Further, the Applciant's claim is statute bared.

I have gone through the relevant forms that where filed by the Petitioner in pursuit of the grant. It is established that the Petitioner voluntarily included the Applicant as a liability tot he estate. The summons for confirmation of the grant dated 9th November, 2009 indicate that the Applicant was to be given one (1) acre in the distribution of the estate. When the parties appeared in court on 22nd March, 2012, they indicated that they had agreed on three acres each. The name of the Applicant was not included in the final distribution. There is also evidence of a sale agreement between the Petitioner and the Applicant.

Given the pleadings herein, I am satisfied that the application for revocation of the grant is merited and the same is hereby allowed. The Petitioner's response is simply evasive. He does not deny that he sold one acre to the Applicant. The certificate of confirmed grant is hereby canceled as prayed. Int he event that the estate has been sub-divided, I do order that plot number **SOUTH KABRAS/CHEMUCHE/602** revert back to the names of the deceased. Cost of the application to the Applicant.

Dated and signed this **24th** day of **February, 2015**

Said J. Chitembwe

JUDGE

Delivered and countersigned on this**18th** day of **March**, 2015

Ruth Sitati

JUDGE