



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**SUCCESSION CAUSE NO. 615 OF 2009**

**IN THE MATTER OF: THE ESTATE OF SAMUEL MUKOYA BUTUBISI alias JUMA MUSA**

**RULING**

The late Samuel Mukoya Bulubisi alias Juma Musa died on 27th August, 2008. His widow, Mary Mukoya filed this succession cause and was issued with a grant of letters of administration intestate on 8th May, 2013. The Objectors herein are brothers to the deceased.

The Petitioner's case is that she had six children with the deceased. The deceased left two plots namely South Wanga/Buchifi/438 and 442. The Objectors are her brothers-in-law. According to her, the Objectors were given their own respective plots by her father in-law. She lives in one plot but the Objectors are using the other plot. During the lifetime of her husband, the Objectors were not using the land. The Objectors started cultivating the land immediately her husband died.

On his part, Simon Malala Butubisi testified that the deceased was their elder brother. They are claiming Plot Number 442.

The deceased was given the land by their late father to hold in trust for them. The deceased was given 5 ½ acres. The other sons were given land as follows:

1. Simon and Shadrack 6 acres jointly on plot No. 972
2. Charles Makokha Plot 970 – 4.6 acres
3. Benjamin Plot 471 – 4.5 acres.

It is evident that they had agreed to divide the land and they met at the Assistant Chief's office but before the land was divided, the deceased passed on. Simon is proposing to give the Petitioner 1½ acres out of plot No. 442.

I have gone through the pleadings herein. I note that the Petitioner got herself registered as the proprietor of Plot Number South Wanga/Buchifi/438 on 8th July, 2013. The plot was later subdivided to plot numbers 2054 – 2057 on 13th September, 2011. By this time no grant had been issued. It is not clear to me how the land registry effected the registration of the Petitioner and the subsequent sub-divisions. The grant herein was issue don 8th May, 2013. The grant has not been confirmed. The registration of the Petitioner is therefore unlawful.

I have read the joint affidavit of Benjamin, Simon, Charles and Shadrack sworn on 14th February, 2013 as well as their supporting affidavit to the chamber summons dated 3rd May, 2010. I have also read the affidavit of Benjamin sworn on 14th December, 2009. The Petitioner did not file any affidavit.

From the evidence on record, the only issue is the distribution of the deceased's estate. It is clear to me that there is no dispute involving plot Number 438 measuring 5.5 acres. Simon's evidence is that the

deceased was given 5.5 acres and this is the same acreage as plot number 438. I do find that Plot Numbers 438 is the absolute property of the deceased.

The dispute is over plot Number South Wanga/Buchifi/442 measuring seven (7) acres. The plot was registered in the names of the deceased on 21st April 1967. The Objectors maintain that the deceased was holding the land in trust for the other children. The deceased was the first born son. The Petitioner herein agrees that the deceased got the land from his father.

Given the evidence on record, I do find that the deceased was to share Plot Number 442 with his other brother. There are four brothers to the deceased. In their affidavit sworn on 14th February, 2013, the Objectors proposed to distribute Plot Number 442 as follows:

1. Benjamin Musa Mutubisi 1.7acres
2. Simon Malala Mutubisi 1 acre
3. Charles Makokha Obutubisi 1.8acres
4. Shadrack Masaba Mutubisi 1 acre

Simon testified that they are willing to give the Petitioner 1½ acres out of Plot Number 442. I will proceed and distribute Plot Number 442 as follows:

1. Mary Mukoya 2.5acres
2. Benjamin Musa Mutubisi 1.25acres
3. Simon Malala Mutubisi 1 acre
4. Charles Makokha Obutubisi 1.25acres
5. Shadrack Masaba Mutubisi 1acre

The deceased's estate shall be distributed as follows:

1. **Plot Number South Wanga/Buchifi/438**

Mary Mukoyo to hold for herself and in trust for her children

2. **Plot Number South Wanga/Buchifi/442**

In the end, the deceased's estate shall be distributed as hereinabove. A confirmed Certificate of Grant shall be issued to the Petitioner in the above terms.

Dated signed this **9th** day of **January, 2015**

**Said J. Chitembwe**

**JUDGE**

Dated, delivered and countersigned this ...**12<sup>th</sup>** day of **March** 2015

**Ruth Sitati**

**JUDGE**