



REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE NO: 309 OF 1998

IN THE MATTER OF THE ESTATE OF ISIAHO MUTSOTSO.....DECEASED

AND

ATNAS MUSAMBAYI MUTSOTO.....PETITIONER

VERSUS

CHARLES AMUTENGU MUTSOTSO.....OBJECTOR

JUDGMENT

The late Clement Isiaho Mustotso died on 19/3/1989. Atanas Musambayi Mutsotso filed this succession cause and was issued with a grant of letters of administration intestate on 22/1/1999. The grant was not confirmed.

On 29/2/2012, the objector, Charles Amutengu Mutsotso filed the current application for the revocation of the grant. The matter proceeded by way of oral evidence. Charles's evidence is that the deceased was his father. He had four sons namely Isiaho, Charles, Musambayi (Petitioner) and Litwachi. Isiaho and Litwachi are deceased. The two deceased brothers left their children. Anjelina is the wife of their late brother Isiaho.

It is the objector's contention that he bought his own land and moved out of their parent's home. However, he was not included in the succession and would like to get his share of his father's estate. The objector called Stephen Muhei as his witness. According to Stephen, the parties are brothers. The objector is claiming his share of his father's estate. The deceased had not distributed his estate before he died. According to Stephen, the objector was born on the suit land. On his part, the petitioners testified that their late father had two wives. The objector is from a different mother while the other three sons, Isiaho, petitioner and Litwachi are from one mother. The suit land was registered in the names of Isiaho. The objector's mother was not living on the suit land.

The main issue for determination is whether the objector is entitled to benefit from the suit land. The succession cause is in relation to the estate of Clement Isiaho Mutsoto. An official search dated 22/6/1998 for plot No. **ISUKHA/SHIRERE/1019** shows that it was registered in the names of SAID MUTSOTSO in 1973. The petitioner filed this succession cause as a brother to Clement Isiaho Mutsotso. According to the objector, his father was Clement Isiaho Mutsoto. The petitioner seems not to be objecting to the fact that the objector is his brother. Although the petitioner contends that the land

belonged to his brother Isiaho, it seems to me that the correct position is that the suit land belonged to the parties, father, Clement Isiaho Mutsotso. This succession cause related to the estate of the parties' father and not brother.

There is no evidence to show that the objector was given his own land by his late father that being the case, I do find that the objector is entitled to inherit the deceased's estate. Even if it is later shown that the land belonged to the deceased's son, Isiaho and not registered in the names of the deceased, I do find that the land was being held in trust for the benefit of the four brothers, Isiaho, Charles, Musambayi and Litwachi.

In the end, I do order that the grant issued to the petitioner be and is hereby revoked. A fresh confirmed grant to be issued to the objector CHARLES AMUTENGU MUTSOTSO. The deceased's estate to be shared as follows:-

PLOT NUMBER ISUKHA/SHIRERE/1019.

1. **CHARLES AMUTENGU MUTSOTSO - 0.15HA.**
2. **ANJELINA ISIAHO To share the remainder**
3. **ATANAS MUSAMBAYI MUTSOTSO equally**
4. **ADRIANO LITWACHI**

Anjelina and Adriano shall hold in their respective shares for the benefit of the beneficiaries of Isiaho Mutsotso and Litwachi Mutsotso. Each party to meet his own costs.

Dated, signed and Delivered at Kakamega this 27th day of February 2014.

SAID J. CHITEMBWE

JUDGE