

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

SUCCESSION CAUSE NO: 278 OF 2007

IN THE MATTER OF THE ESTATE OF KENZIA

DALITSU alias KETSIA DALIDZU.....DECEASED

AND

1.BROWN OTENGO ASAVA.....PETITIONERS

2. ARTHUR MWANZI ASAVA

VERSUS

JEREMY MUDAKI ASAVA.....OBJECTOR

R U L I N G

The application dated 17th July 2012 seeks a review of the court ruling made on 10/5/2012. The application also seeks to stop the Vihiga Land Registrar from registering new entries as a result of subdivision of plot number **KAKAMEGA/MBALE/532**. The application is supported by the applicant's affidavit.

Mr. Athunga , counsel for the applicant submitted that the court ruled that Plot 532 be divided equally amongst the parties. The court relied on the proceedings in succession cause number 45B of 1990 but the grant issued in that cause was revoked. The applicant's position is that the two respondents were given their respective share. The suit land remained in the names of the deceased and was for the benefit of the applicant who is the last born. Plot 532 therefore ought to have been given to the applicant.

Mr. Nyikul, counsel for the respondent opposed the application. Counsel contends that here are no new facts to warrant a review of the court ruling. The court only confirmed the grant.

In my ruling of 10/5/2012 I noted the fact that the court in Kakamega Succession cause No. 45B of 1990 revoked the grant that had been issued to the objector. Therefore the submissions that this court relied on the proceedings yet the grant had been revoked are misplaced. The main issue for determination is whether the applicant is entitled to plot number 532 exclusively.

In my ruling of 10/5/2012, I held that the three sons were each given their own land. The applicant herein was given Plot **KAKAMEGA/LYDUYWA/1269** which he sold while the respondents got plot number 1265 and 1268. The applicant has not denied that he got plot number 1269. If each of the three beneficiaries had already been allocated land, the only logical conclusion is for plot 532 to be shared equally. This was the proposal made by the respondents in essence therefore, all the issues being raised have already been dealt with by the court.

In the end, I do find that there is no new information that has been presented by the applicant to warrant a review of the ruling of 10/5/2012. The application dated 17/7/2012 lacks merit and the same is hereby dismissed with costs.

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

SAID J. CHITEMBWE

JUDGE