

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO: 245 OF 1998

IN THE MATTER OF THE ESTATE OF NABWOBA
SAKWA.....DECEASED

AND

EDWARD MUKHWANA SAKWA.....PETITIONER

VERSUS

NELSON SAKWA KHAYENJE.....OBJECTOR

JUDGMENT

The late Nambwoba Sakwa died on 30/6/1973. She was survived by three sons, Edward Sakwa, Ngosia Sakwa and Nelson Sakwa. The deceased was not registered owner of plot number **KAKAMEGA/LUANDETI/597**. Edward and Ngosia filed the succession cause and were issued with a grant of letters of administration on 5/1/1999. The grant was confirmed on 18/8/1999.

On 13/2/2000, Nelson filed a notice of motion seeking to have the confirmed grant revoked. On 28/4/2010 the grant was revoked by the court and on 29/9/2010 the court appointed the two parties herein to be joint administrators, Ngosia is since deceased.

The dispute revolves around the distribution of plot number 597. The objector, Nelson, testified that his late father gave him 9 acres of land while the petitioner was given 8 acres. The land in dispute belonged to Ngosia who is now deceased. It was registered in their mother's name Ngosia had no wife or child. He proposed to distribute the land equally.

On his part, the petitioner testified that he filed the succession cause and Ngosia was to take 0.4 hectares. He produced a search dated 1/2/2000 whereby he was registered as the proprietor for 0.4 Ha. It is his further evidence that he owns plot number **N.KABRAS/LUANDETI/2129** measuring 3.20 Hactares. This plot was created from plot number 597. The petitioner's proposal is to give the objector ½ acre.

The evidence on record shows that plot 597 was registered in the names of the deceased. It is not clear from the parties' evidence as to whether the 9 and 8 acres given to both parties are separate from plot number 597. It is also not clear as to the exact land to be distributed. A search dated 22/9/1997 indicates that the land is 4.8 ha. The objector's evidence is that he can take two (2) acres while the petitioner gets two (2) acres making a total acreage of four acres.

The grant issued to the respondent and his late brother Ngosia was nullified by the court. The nullification restored the suit land in the names of the parties, deceased mother Nabwoba Sakwa. The effect of that order is that plot number **N.KABRAS/LUANDETI/2129** was cancelled as it is a sub-division of plot number 597.

Given the evidence on record, I do find that the objector has proved his case as required. I will go by the objector's evidence which is in line with his affidavit sworn on 6th April, 2011 to the effect that the land to be distributed is four (4) acres. I do order that the share of the late Ngosia Sakwa be distributed equally between the objector and the petitioner. Each party shall meet his own costs.

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

SAID J. CHITEMBWE

JUDGE