



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**SUCCESSION CAUSE NO: 384 OF 2012**

**IN THE MATTER OF THE ESTATE OF MUSA KEYA  
LIBWEGE.....DECEASED**

**AND**

**PETER LUNYAGI MUSA.....PETITIONER**

**AND**

**FLORENCE ANDESA ..... 1<sup>ST</sup> OBJECTOR/APPLICANT**

**EUNICE ODILA ..... 2<sup>ND</sup> OBJECTOR/APPLICANT**

**RULING**

The application dated 11<sup>th</sup> March 2013 seeks to restrain the respondent, John King'ori Ngirimu from intermeddling with the deceased's estate namely plot number Maragoli/Buyonga/2083.

The application is supported by the affidavit of Florence Andesa and Eunice Opila sworn on 11<sup>th</sup> March 2013. The respondent filed a replying affidavit sworn on 29<sup>th</sup> May 2013.

The submissions by Miss Rauto, counsel for the applicant, as well as the averments contained in the supporting affidavit is to the effect that the deceased was survived by sons and daughters. The sons sold the property to the respondent without involving the daughters. The deceased was also polygamous and no will was left by the deceased.

On his part, Mr. Didi counsel for the respondent contends that the deceased's sons approached the respondent for assistance. The property was sold as the monthly rent was only Ksh 14,000 and it was causing disharmony amongst the children. Nobody was forced into the transaction.

The record herein shows that the deceased died on 29/3/2012. According to the letter from the chief of Maragoli location dated 17/5/2012, the deceased was survived by twelve daughters and three sons. This case was filed on 21<sup>st</sup> May 2012. No grant has been issued to the petitioner although the cause was gazzetted. The sale agreement for the purchase of the property was made on 14<sup>th</sup> May 2012 even before this cause was filed. The three sons could only sale their share as opposed to the entire property. Since no grant had been issued, the vendors lacked capacity to transact. The purchaser was represented by counsel who could have sought the consent of all the beneficiaries before preparing the sale agreement.

I do find that the application is merited and the same is allowed. The succession law provides for equal distribution of the estate amongst the children. The validity of the will ,will be dealt with during the hearing of the cause.

In the end, the application dated 11/3/2013 is granted as prayed. The respondent should keep off the deceased's estate.

Dated, signed and Delivered at Kakamega this 27<sup>th</sup> day of February 2014.

**SAID J. CHITEMBWE**

**JUDGE**