



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

CITATION CAUSE NO 556 OF 2009

IN THE MATTER OF THE ESTATE OF OTEMBO NJWARA.....DECEASED

AND

JUMA MUTSOLI BAKARI.....PETITIONER

VERSUS

ADIJA MUTOTO MAREMBE.....OBJECTOR

JUDGEMENT

The late Julius Otembo Njwaya died on 18/5/1988. Juma Mutsoli Bakari filed this citation calling upon the two citees to take up letters of administration. The deceased left plot numbers **N/WANGA/MAYONI/915**. Isaac is the deceased's son while Adija Mutoto is the deceased's widow. The citor's claim is that he bought two (2) acres by land from the deceased.

This matter proceeded by way of oral evidence the citor's evidence is that he bought two acres of land from the deceased in 1974. He has since been living on the land. The surveyor visited the land and was giving him a portion that is less than two acres. It is the citor's evidence that Isaac moved the boundary.

The citor further testified that he filed Kakamega RMCC 186 of 1977 and he was awarded two acres by the court. PW2, OMAR OSUNDWA OKANGA testified that on 11/3/2007 Isaac alias Patrick Watitwa called him to his home for a meeting. Isaac agreed to give the citor two acres of land provided that the citor meets the costs. A document was signed by the parties. The surveyor tried to give the citor 1 ½ acres instead of two acres.

ISAAC WATITWA OTEMBO testified as DW1. His evidence is that the deceased was his father. He died in 1988. He concedes that his late father gave the citor land in 1072. Boundaries were placed on the ground. The citor moved the boundary in 2011 and the area assistant chief was informed. He is willing to give him the portion that was given out by his late father.

The court visited the land in dispute. The only issue for determination is whether the citor is entitled to two (2) acres or (1 ½) one and a half acre of land. The courts made an order that a surveyor visits the land and demarcate the portion occupied by each party. The surveyor's report shows that the citor is occupying 1.38 acres. The citor objects to that finding.

The evidence on record shows that the citor filed civil suit number 186 of 1977 before the Kakamega Resident Magistrate. The suit was between the citor and the deceased herein. On 25/10/1997 parties

appeared before the court and recorded consent: The consent reads as follows:-

“By consent the plaintiff to receive 2 acres, of the land No. N/WANGA/MAYONI/60 from the defendant which had been bought by the said plaintiff and had not been transferred in the plaintiff’s name. The price of the land was agreed at Ksh 800/- out of which Kh 700/- had already been paid and the balance of Ksh 100/- will be paid at the end of October, 1977 at home”

According to the proceedings of that case, the deceased was paid the balance of the purchase price on 5/12/1977 in court and he did acknowledge receipt.

The citor also produced an agreement made on 20/8/2009 between himself and Isaac Watitwa whereby Isaac agreed to give him two acres of land. The agreement indicate that no other expenses were to be made, PW2 produced another document dated 17/3/2007 whereby Isaac agreed to give the citor two acres of land.

From the evidence on record, I am satisfied that the citor bought two acres of land from the deceased. Although the citor might be occupying less than two acres, he is entitled to two acres of land. The deceased consented in court to give the citor two acres of land. The deceased was paid for two acres of land. Even the cite, Isaac agreed to give the citor two acres of land and his contention that he did not sign the documents dated 17/3/2007 cannot be true. His identity card number is on the document. The citor is an elderly man who seems not to be literate and could not forge the document.

In the end, I do find that the citor is entitled to two (2) acres of land out of plot number **N. WANGA/MAYONI/915**. A grant of letters of administration to be issued to the citor, JUMA MUTSOLI BAKARI, ISAAC WATITWA OTEMBO and ADIJA MUTOTO MUREMBE as follows:

PLOT N. WANGA/MAYONI/915

1. **JUMA MUTSOLI BAKARI 2 ACRES**
2. **ADIJA MUTOTO MUREMBE The remainder to distribute as per their own agreement**
3. **ISAAC WATITWA OTEMBO**

I do order that each party meet his/her own costs.

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

SAID J. CHITEMBWE

JUDGE