



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 524 OF 1999

IN THE MATTER OF THE ESTATE OF ANGARA KHAFIRE.....DECEASED

ERNEST EBOKO JAMES PETITIONER

V E R S U S

KALULUSI OKALA ANGARA 1ST OBJECTOR

ANZAYA OKANGA 2ND OBJECTOR

J U D G M E N T

The late **ANGARA KAFIRE** died on the 20.9.1981. His great grandchild **ERNEST EBOKO JAMES** filed this succession cause and was issued with a grant on the 4.2.2000. The grant was confirmed on the 11.4.2000. The deceased left two plots namely **KISA/SHIBINGA/480** measuring **2.2 acres** and **KISA/SHIBINGA/517** measuring **2.1 acres**. The objectors filed an application to revoke the grant dated 17.5.2004 contending that the petitioner is not close relative to the deceased compared to the applicant. The matter proceeded by way of oral evidence.

The 2nd objector **ANZAYA OKANGA** testified as **PW1**. His evidence is that the deceased **ANGARA KAFIRE** had a brother by the name **ANZAYA KAFIRE**. **PW1** is a grandchild of **Anzaya Kafire**. **Angara** had no child but was married. The wife also died. The petitioner's father is called **JAMES OLUCHETU**. **James Oluchetu** is the son of **RASTO OLUCHETU**. **Rasto Oluchetu** was the son of **Anzaya Kafire**. According to **PW1** his father was **OKANGA ANZAYA** who was the son of **ANZAYA KAFIRE**. The petitioner calls him his father in the clan and is therefore closer to the deceased. The 1st objector **KALULUSI OKALO ANGARA** is the last born child of **ANZAYA KAFIRE**.

PW1 testified that the deceased had two plots. Plot 517 was sold by the deceased to **CLIDE MUKA** who is deceased. **Clide** left his son **ROBERT**. The petitioner is using that plot but was stopped. Plot 480 is occupied by the petitioner and has built a house. He started using the plot in the year 2002. The deceased left no other property. He prays that plot 517 be given to the purchaser's son and plot 480 be given to the two objectors. The petitioner was given land by his father. The petitioner's father never used plot 480. He was present when the deceased sold land to **Clide**.

PW2 REUBEN OKUNDA AMANI testified that he knew the deceased. The petitioner is the son of **JAMES OLUCHETU** and a grandchild of **OLUCHETU**. **KALALUSI ANGARA** is the child of **ANZAYA KAFIRE** and is closer to the deceased. It is his evidence that **Angara** had no child and was over 90 years old but was married. He would like plot 480 to be given to the objectors as plot 517 had been sold to **Clide Muka**. The petitioner has built on the suit land. **PW3 ROBERT KUBONDO MUKA** testified that his father **CLIDE OBONDO MUKA** bought plot 517 in 1971 from the deceased. The

purchase price was KShs.700/= and he has been living on the land since 1971 when he was 6 years old. In the year 2000 he sued the petitioner at the Land Disputes tribunal and the decision was in his favour. The petitioner appealed but the appeal was dismissed. He filed Misc. Civil application No. 198 of 2001 before the Chief Magistrate's Court at Kakamega and a vesting order was issued on the 8.8.2003. There was a final balance of the purchase price and it was given to James Oluchetu who is the father of the petitioner before the area assistant chief. He is currently using the land with his brothers.

The petitioner **ERNEST EBOKO JAMES** testified that he is a great grandchild of the deceased. His grandfather is **RASTO OLUCHETU**. The 2nd objector PW1 is a brother to his grandfather but from different mothers. His father took care of the deceased, his wife and daughter until their death. He was told to do so and promised to take over the two plots. According to him the deceased had another plot number 551 that was sold to **JAMII OKWARO**. After the death of the deceased his father took over the two plots. He built a house on plot number 480 and started cultivating plot number 517. His late father settled him on plot 480 and that is where he has his homestead. The objectors started complaining in 1999. The 2nd objector is pushing the 1st objector who did not testify so that he can sell the land. The objectors are not using the land. He has leased part of the land. He testified that plot 517 was not sold and Clide's family has never used plot number 517. He filed this succession with his father who died in 2003. His father is **JAMES OCHOLA OLUCHETU** who is the son of **RASTO OLUCHETU ANZAYA**. He concedes that the 1st objector Kalulusi is closer to the deceased. The objectors saw his father using the land but they did not sue him. Kalulusi has his own land which is not far from plot number 480.

DW2 ELIJAH KABAKA AKULA was the chief of Kisa East location. He was formerly the assistant chief of Eshibinga sub-location. He testified that he knew the deceased who had a wife and a daughter. The wife was called **MARIA JAWARA** while the daughter was called **JANET OMUSULA**. They are all deceased. Angara Kafire died in 1981 when he was the area assistant chief. James Oluchetu who is the petitioner's father is the one who arranged the burial of the deceased. James took care of the deceased as he was living near the deceased's home. James used to cultivate for the deceased and got crops from the deceased's land which he used to feed the deceased. The deceased had plot number 517 and 480. He had a third plot which had been sold to Clide. He is the one who wrote the letter for the succession. The objectors later went to him and told him that they are relatives of the deceased. James passed on and wanted his son the petitioner to take over the land. The petitioner was allowed by the deceased daughter to build his house on the land. The petitioner built his house in 1992 and up to now lives on the plot. The objectors have never used the land.

From the evidence on record the objectors contend that they are closer to the deceased as compared to the petitioner. It is established that the petitioner had two plots namely 480 and 517. There is enough evidence that plot number 517 was sold to one **CLIDE MUKA**. PW3 produced proceedings before the Provincial Land Disputes Appeals Tribunal and on the 14.5.2002 the appeal filed by the petitioner and his father was dismissed. The dispute related to plot number **517**. The Chief Magistrate's Court in Misc. Civil application No. 198 of 2001 issued a vesting order in favour of PW3 against the petitioner and his father on the same plot. I am therefore satisfied that plot number **517** was sold to Clide Muka. The petitioner testified that Clide Muka bought plot number **551** and not **517**. No documentary evidence has been produced. The proceedings before the Land disputes Tribunal were in relation to plot number 517 and not 551. I do therefore find that plot number 517 belongs to PW3 and his family.

With regard to plot number 480 the evidence shows that the petitioner has built a house on the land and lives there. The plot is 2.2 acres. The petitioner has another plot nearby. The petitioner's contention is that his father took care of the deceased owner and the land was given to his father James Oluchetu by the deceased. According to DW2 the deceased's daughter allowed the petitioner to build a house on the land. The petitioner contends that his mother and brother live on their other plot number 217 while he lives on the suit land. Given the evidence on record it is clear that PW1 calls the deceased his grandfather. The deceased was a brother to his grandfather. The 1st objector Kalulusi called the deceased his uncle, a brother to his father Anzaya Kafire. The petitioner is a great grandchild of Anzaya Kafire who was a brother to the deceased. The petitioner's nexus to the plot is that his father took care of the deceased. According to the evidence of DW2 it is established that James Oluchetu took care of the deceased. The objectors even did not know that the deceased had a daughter. Although the objectors are

closer to the deceased I do find that it would be unfair to evict the petitioner from the suit land. I will distribute plot number **KISA/ESHIBINGA/480** as follows:-

The petitioner - 1 ½ acres

The objectors - the remainder

Those are the orders of the court. Should there be evidence that there is plot number 551 which belongs to the deceased then parties are at liberty to apply to court and have it enjoined. Each party shall meet his own costs.

Delivered, dated and signed at Kakamega this 19th day of June 2014

SAID J. CHITEMBWE

J U D G E