



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 458 OF 2012

**IN THE MATTER OF THE ESTATE OF AUYA AMATALO alias AWAY AMATALO
(DECEASED)**

AND

AMIANI AYWA AMATALO APPLICANT

AND

JAMES ONIANGO AYWA PETITIONER

RULING

The objector filed his application dated 25.5.2012 seeking to have the certificate of confirmed grant issued to the petitioner who is his brother revoked. The matter proceeded by way of oral evidence. The objector testified that the deceased was his father and the petitioner is his elder brother. The land was subdivided and he was given where the grave of his parents are. His brother sold a portion of the land to their brother in-law and divided the land into three portions. He has refused to give him his title deed. The cost of the succession was catered for by their brother in-law.

The petitioner JAMES ONIANGO AYWA testified that it is true that he sold a portion measuring 0.04 hectares to their brother in-law CHARLES ETALE. He contends that he sold that portion from his share. There are two other plots namely **BUNYORE/EBUSAKAMI/2928** and **2929**. One of the plots is meant for the objector and he has no objection to release the plot to him. He is only requesting to be paid the cost incurred in the succession and the objector meets the cost of transferring the plot to him.

I have gone through the parties' pleadings herein. The petitioner was issued with a grant by the court in Vihiga on the 11.1.2009. In the pleadings it is indicated the deceased had two properties namely **W.BUNYORE/EBUSAKAMI/400** and **18**. Plot number **400** is 0.2 acres and was registered in the deceased in 1969. Plot number 18 was subdivided into three portions and two portions are in the names of the petitioner. These are plot **2928** measuring 0.13 hectares and plot number **2929** measuring 0.15 hectares. The third plot number **2930** is in the names of Charles Etale Otenda who got his title on 14.2.2001. The plot is 0.04 hectares. It is not clear how the subdivision was done as I was not able to see a confirmed certificate of letters of administration.

Since the petitioner is willing to give his brother his plot and since there is another plot number 400 I will distribute the deceased's estate as follows:-

1. W.BUNYORE/EBUSAKAMI/400

a. AMIAMI AYWA AMATALO - 0.1 acres

b. **JAMES ONIANGO AYWA - - 0.1 acres**

2. **W.BUNYORE/EBUSAKAMI/2929**

AMIAMI AYWA AMATALO

3. **W. BUNYORE/EBUSAKAMI/2928**

JAMES ONIANGO AYWA

I do note from the pleadings that the objector had wanted to take the two plots that is 2928 and 2929 while his brother takes plot number 400. If the proposed arrangement is agreeable to the parties then they can file a consent to that effect. The deceased's estate is therefore distributed as above and parties are at liberty to apply. There shall be no orders as to costs.

Delivered, dated and signed at Kakamega this 18th day of September 2014

SAID J. CHITEMBWE

J U D G E