

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 613 OF 2004

ELEMINA KHAMUYE CHETTO PETITIONER

V E R S U S

CATHERINE MISIKO RESPONDENT

R U L I N G

The late **MURUNGA SIMWA** died on the 20.1.1981. His daughter in-law **ELEMINA KHAMUYA CHETO** filed this succession cause and she was issued with a grant of letters of administration intestate on the 29.3.2005. The grant was confirmed on the 21.3.2006. On the other hand the deceased's daughter **CATHERINE MISIKO** filed Nairobi Succession Cause No. 3017 of 2003 and was also issued with a grant. Counsel for Elemina and Catherine recorded a consent before the court in March 2010 whereby the two grants were dispensed with and a fresh grant was issued to both parties jointly. The grant was issued on the 26.5.2010. On 3.12.2010 Elemina filed an application to have the grant confirmed. The matter proceeded to full hearing.

Elemina, the petitioner, testified that the deceased was her father in-law. He had three sons and four daughters. He distributed his estate to his sons. The daughters were not given any land. The sons were **JAMES MURUNGA SIMWA, MAKAMU MURUNGA** and her husband **JOCOB CHETO MURUNGA** who are all deceased. James sold his land and went to Malava with his children. Makamu also sold his land and went out with his money with the intention of buying another land. He however came back home and later died. She is the one who handled Makumu and buried him. It is her evidence that the land belongs to her and would like to have it registered in her name. She is willing to give her sister in-law a $\frac{1}{4}$ of an acre.

PW2 SAULO JAME ANDANJE is the son of James Murunga Simwa. His evidence is that the petitioner is his aunt and that his grandfather had distributed his estate to his sons. His father James sold his share and went to Malava. The suit property plot number 315 was for Jacob who is the petitioner's husband. His other uncle sold his share to one **ABWOBA**.

The respondent Catherine Naliaka Misiko testified that she is the deceased's daughter. Her father divided his estate to his three sons and a portion remained for the daughters. James who was the first born sold his share and went to buy land at Malava. Samson Makamu also sold his land. Jacob who is the petitioner's husband sold his share and claimed that he will go to the scheme but he did not and stayed at home. She filed the succession cause in Nairobi as she was working there and she was issued with a grant. The deceased gave the remaining portion to three daughters who were not married. They are **RODA, SAUMU** and herself. Roda left home and Saumu got married in Mombasa. Roda and Saumu later sold their share in 2012 to one **MARGARET**. She has given the petitioner a portion of land with her children. It is her evidence that the petitioner and her husband sold their share to **ALFAYO ABWOBA** who is deceased but his children are on the land. The petitioner has lived on the land since 1966. It is her further evidence that the petitioner is entitled to get a portion of the suit land. She is willing to give her 0.4 acres. There is also a church which is occupying a portion given out by the respondent.

The court visited the suit land on the 24.2.2014. The main issue for consideration is the distribution of the suit land. The deceased's estate is **S.KABRAS/SHIAMBERERE/315** measuring 1.2 Hectares. According to the evidence on record and the situation on the ground it is established that there are several buyers who were occupying part of the land. The beneficiaries acknowledge that part of the land was

sold but the exact portions sold to the buyers are not clearly indicated. It is therefore difficult at this stage to make any meaningful distribution of the estate without knowing the extent of the portions occupied by the buyers. I will therefore make the following directions:-

1. The Kakamega Land District Registrar and Surveyor to visit the suit property number S.KABRAS/SHAMBERERE/315 and mark out the portions occupied by the family of Margaret, Abwoba's family, the portion occupied African Kenya of Soi Church, portions occupied and utilized by the two parties and any other purchaser on the ground.
2. Parties herein to share the costs of the survey work.
3. Thereafter the matter to be listed for final ruling on distribution of the estate.

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

SAID J. CHITEMBWE

J U D G E