

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 142 of 1992

IN THE MATTER OF THE ESTATE OF MURUTU WERE DECEASED

TIMOTHY MWAKHWA MURUTU1ST APPLICANT

JACKSON WERE MURUTU 2ND APPLICANT

V E R S U S

JAMES AMUKHOYE ESHITERA RESPONDENT

R U L I N G

The applicants are seeking an order of injunction restraining the respondents from constructing or cultivating plot number **NORTH WANGA/NAMAMANI/889** pending the determination of this succession cause. It is the applicants' contention that a grant of letters of administration that was issued to the petitioner was revoked on 22.8.2003. The petitioner's son, one **James Amukhoye Eshitera** is constructing and ploughing the deceased's estate. The petitioner is a stranger to the deceased.

Miss Omar, counsel for the respondent relied on the respondent's replying affidavit sworn on 5th December 2012. Counsel submitted that the respondent has been living on the suit land since time immemorial. The respondent avers that his house is on the suit land and the land belongs to **Murutu Were**. Counsel submitted that the grant has not been confirmed. The petitioner is the respondent's father. A grant of letters of administration intestate was issued to the petitioner on 25th July 1996, the petitioner filed an application for the confirmation of the grant dated 4th March 1997. On 16th July 1978 Justice B. K. Tanui declined to confirm the grant stating that the petitioner was not the son of the deceased. The judge noted that the deceased's son was **TIMOTHY WAKHWA MURUTU**.

On 12th June 2002, **TIMOTHY MWAKHA MURUTU** and **JACKSON WERE MURUTU** filed an application to have the grant issued to the petitioner revoked. The two averred that they are the sons of the late **MURUTU WERE**. On 22nd August 2003, Justice Hatari Waweru granted that application and the grant was revoked. The court ordered that a fresh grant be issued to the objectors jointly.

The respondent herein is the petitioner's son who is now deceased. It is clear from the record that the petitioner is not related to the deceased. I do find that the application is merited and the same is granted as prayed. The respondent is hereby restrained from constructing or cultivating the deceased estate comprising plot number **N. WANGA/NAMAMLI/889**. The respondent shall continue residing on the land pending the finalization of the Succession Cause.

Since no fresh grant was issued as per the ruling of Justice Hatari Waweru of 22nd August 2003, I do order that a grant be issued to the two objectors jointly. The respondent contends that the 1st objector is deceased but no death certificate has been annexed. I do further order that the applicants filed an application for the confirmation of the grant as a matter of urgency and serve it upon the respondent.

In the end, the application dated 25th February 2011 is granted as prayed. Each party to meet his own costs.

Delivered, dated and signed at Kakamega this 27th day of February, 2013

SAID J. CHITEMBWE

J U D G E