



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Succession Cause 275 of 2003**

**IN THE MATTER OF THE ESTATE OF WANYAMA NDOMBI ... DECEASED**

**A N D**

**CHRISTINE MAKOKHA WASWA ..... APPLICANT**

**V E R S U S**

**FREDRICK WEKULO ..... RESPONDENT**

**R U L I N G**

The petitioner, **Christine Makokha Waswa**, filed an application dated 13<sup>th</sup> March 2012 seeking to have the caution/restriction registered against plot number **Bunyala/Sirigoi/119** lifted, removed or withdrawn. A similar application seeking the same orders was filed on 3.10.2012. On the other hand, the objector, **Fredrick Wekulo Wanyama** filed his application dated 17<sup>th</sup> November 2012 seeking to have the two acres granted to the petitioner transferred to him.

Parties agreed to rely on their respective pleadings. In the application by the petitioner, it is contended that the court issued a certificate of confirmed grant jointly to the parties. However, the objector had placed a caution against plot number 119 hence making it impossible for the petitioner to effect the confirmed grant.

The objector filed a replying affidavit sworn on 17<sup>th</sup> November 2012. The application dated 17<sup>th</sup> November 2012 is technically not on record as it is an annexure to the affidavit and according to the affidavit, the objector intends to file it.

The objector's position is that there is an error apparent on the face of the record as the court held that he had not given his mode of distribution yet his application for confirmation of the grant had stated how the estate is to be distributed.

The court record shows that a ruling on distribution of the estate was delivered on 15<sup>th</sup> April 2010. In that ruling, I did distribute the estate and the petitioner was to get two acres out of plot number **BUNYALA/SIRIGOI/119** while the rest of the estate comprising of three acres of plot **119**, plot **BUNYALA/SIDIKHO/644** and **BUNYALA/SIDIKHO/635** were to be registered in the names of **Zaina Wanyama Ndombi** who is the deceased's surviving widow and the objector's mother.

I do note that in his application for confirmation of the grant on 21<sup>st</sup> May 2008, the petitioner proposed to distribute the estate as follows:-

1. **BUNYALA/SIDIKHO/635 (2 HA.)- ZAINABU WALEKHWA BULUMA**
2. **BUNYALA/SIRIGOI/119 (2.0 HA.)- FREDRICK WEKULO WANYAMA**
3. **BUNYALA/SIDIKHO/644 (0.6 HA.) - CHARLES WERE SHIKUKU**

The earlier ruling did not take into account the above proposed mode of distribution. That proposal was opposed by the petitioner as she was not given a share of the estate. the petitioner's proposed mode of distribution as per her affidavit in protest sworn on 19<sup>th</sup> January 2009 was as follows:-

- i. **BUNYALA/SIDIKHO/635 - ZAINABU WALEKHWA**
- ii. **BUNYALA/SIDIKHO/644 - CHARLES WERE SHIKUKU**
- iii. **BUNYALA/SIRIGOI/119 -**
  - (a) **FREDRICK WEKULO - 3 ACRES**
  - (b) **CHRISTINE MAKOKHA WASWA - 2 ACRES**

The objector's contention is that the two acres that were given to the petitioner should be given to him so that he can take the whole plot number 119. It is the objector's position that the petitioner was born out of wedlock. In essence, the objector still maintains that the petitioner should not get anything from the estate. The objector would also wish to have the estate distributed to the beneficiaries instead of the widow. According to the pleadings the petitioner is the only child of the first wife – **MAJUMA NDOMBI** while the objector and his brother Charles Were Shikuku and three sisters – Zainabu Ofwere, Nakhumwa Wanyama and Zainabu Walekhwa Buluma are from the 2<sup>nd</sup> wife – **Zaina Wanyama**.

In view of the contentions by the objector that the estate be distributed to the beneficiaries, I do vary the judgment of 15<sup>th</sup> April 2010 and re-distribute the deceased's estate as follows:-

- 1) **PLOT BUNYALA/SIDIKHO/644 - CHARLES WERE SHIKUKU**
- 2) **PLOT BUNYALA/SIRIGOI/119**
  - a) **3 ACRES - FREDRICK WEKULO WANYAMA**
  - b) **2 ACRES - CHRISTINE MAKOKHA WASWA**
- 3) **PLOT BUNYALA/SIDIKHO/635**
  - a) **1.5 HECTARES - ZAINABU WALEKHWA BULUMA**
  - b) **0.5 HECTARES - ZAINA WANYAMA NDOMBI – ( to hold in trust for her two daughters – ZAINABU OFWERE and NAKHUMWA WANYAMA**

The certificate of confirmed grant issued on 15<sup>th</sup> April 2010 is hereby revoked. A fresh certificate shall be issued to the petitioner Christine Makokha Waswa only in the above terms. I do further order that the restriction registered against plot number **BUNYALA/SIDIKHO/119** be vacated. The petitioner's application for lifting of the caution is hereby granted as prayed. The petitioner to sign all the necessary documents and effect the above distribution so that each beneficiary gets his/her respective share. Each party to meet his/her own costs.

*Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of February, 2013*

**SAID J. CHITEMBWE**  
**J U D G E**