

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 1002 of 2012

IN THE MATTER OF THE ESTATE AMRAM MAKAMU SOLOSO... DECEASED

A N D

JETHRO MAKAMUPETITIONER/APPLICANT

V E R S U S

JOSEPH ALUSA MAKAMU RESPONDENT

R U L I N G

The applicant filed his application dated 17th September 2012 seeking permission to petition for a grant of letters of administration intestate without a letter from the Virhembe Assistant Chief, he is also seeking an order cancelling the sub-division of plot number **ISUKHA/VIRHEMBE/1000** that belonged to the deceased herein as well as a stay of execution of the judgment in **KAKAMEGA CMCC NO. 95 of 2011**. The application is supported by the applicant's affidavit and Mr. Kundu, counsel for the applicant, entirely relied and its supporting affidavit.

The applicant contends that the respondent is his brother and the deceased was their father who had died on 8th July 2008. By the time of his death, the deceased had not sub-divided land but the respondent divided the land and plot numbers **ISUKHA.VIRHEMBE/1517** and **1518**. He got himself registered as proprietor of plot number **1517** and would like to evict the respondent from that.

In his replying affidavit sworn on 8th October 2012, the respondent contends that his late father sub-divided his land while alive. Plot number **1517** was given to him while plot number **1518** remained in the names of the deceased. The applicant refused to assist in having plot number **1518** transferred into his names while their father was alive. The respondent obtained his title. He filed **Kakamega CMCC NO. 95 OF 2011** and obtained eviction orders against his brother – the applicant. The respondent maintains that the applicant willfully agreed to vacate the plot and signed an agreement.

The record shows that the late **AMRAM MAKAMU** the parties' father died on 8/7/2008. It is also established that as of 7/7/2008, the suit property was still registered in the names of the deceased. The respondent annexed a mutation form dated 4/7/2008 and two certificates of official search for the two sub-divisions – that is plot number 1517 and 1518. The respondent was registered as the proprietor of plot number **ISUKHA/VIREHEMBE/1517** on 5th November 2008. The second search shows that the deceased was registered as the proprietor of plot number **ISUKHA/VIRHEMBE/1518** on 7/7/2008.

If we are to go by the three official searches, it would mean that plot number **ISUKHA/VIRHEMBE/1000** was sub-divided on 7/7/2008 and the sub-divisions were endorsed in the land register on the same day. The deceased died the following day, 8/7/2008. It is not clear who then signed the transfer forms in favour of the respondent that enabled him to become the registered owner of plot number 1517 on 5/11/2008. Ordinarily, after a sub-division is made, both plots are first registered in the names of the original owner who thereafter would decide to transfer any portion of the subsequent sub-divisions as he wishes. There is no application for consent to sub-divide or transfer from the relevant Land Control Board annexed. The transfer forms that enabled the respondent to obtain his title are also not annexed.

From the pleadings herein, I am satisfied that the respondent got himself registered as the proprietor of part of the deceased's estate without going through the mandatory succession process. It is not possible that the deceased signed transfer forms before his death and then the same were presented for registration after his death. I do find that the applicant's application is merited and the same is fully granted as prayed. Parties are brothers and each will meet his own costs.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E