

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 649 of 2009

IN THE MATTER WILLINGTON NYANGULE MULAMA

WILBERFORCE OTATA MULAMA PETITIONER

V E R S U S

WILKISTA SHIUNDU MALILO OBJECTOR

R U L I N G

The late **WILLINGTON NYANGULE MULAMA** died on the 14th of June 2006. He was survived by **WILKISTA SHIUNDU MALILO**, the objector herein who is his only daughter and beneficiary to his estate. The petitioner **WILBERFOCE ORATA MULAMA** is a brother to the deceased. He petitioned this court for grant of letters of administration intestate and was issued with a grant on the 14.12.2009. The grant was confirmed on 18.10.2010.

The objector herein filed her application dated 23.11.2010 seeking to revoke the grant on the grounds that the petitioner concealed material facts and that the grant was obtained fraudulently. Parties agreed to proceed by way of oral evidence. The objector testified that she is the only daughter of the deceased. The deceased had three wives and her mother was the first wife who is now deceased. The second wife **STELLA KEYA** is also deceased. The third wife **MARY NAFULA** is alive but left after her father's death. The deceased had only one child – the objector. It is the objector's evidence that the petitioner has his own and he is a half-brother to her late father. The two are from the same father but of different mothers. She contends that she was not involved in the filing of the cause and did not sign any consent document as alleged. She would like to take the deceased's estate comprising of plot number **MARAMA/SHINAMWENYULI/1225** measuring 7 ½ acres. She is not aware of **KAKAMEGA HCCC NO.95/2005** between her father and a purported purchaser.

DONALD MUMIA SALISI testified for the objector. His evidence is that the deceased was his uncle being a brother to his father. The objector is his niece. The petitioner herein is also his uncle but from a different mother. The deceased had two brothers namely **SHABANI MULAMA** and **SHIUNDU MULAMA** but are all deceased. He further testified that the deceased had only one child who is the objector. The petitioner lives on his own land with his three wives.

The petitioner on his part testified that the deceased was his elder brother and his friend as well. When he passed on the family met and allowed him to file the succession cause. The deceased had sold his land to two purchasers namely – **RUTH MUKOLO** and one **SAKWA** between 1992 and 2002. The deceased disagreed with the buyers and there is a case number 95 of 2005 before the Kakamega High Court. He wanted to take over the case and see if the purchasers could be paid off and the land distributed amongst family members. The petitioner does confirm that the objector is the only child of the deceased. He consulted the objector before filing the succession cause and she signed all the relevant documents.

The main issue for determination is whether the objector should be allowed to be the administrator of her deceased father's estate. It is clear from the proceedings herein that the objector is the only child of the deceased. She is therefore entitled to petition the court for grant of letters of administration. Section 38 of the Law of Succession Act empowers the objector to succeed her father. I do acknowledge that the petitioner herein was pursuing the succession cause in good faith. The objector and her niece contend that the petitioner had started selling part of the land. Since the petitioner acknowledges that the objector is the

deceased's child I do grant the application by the objector dated 23.11.2010. The grant herein shall be revoked and a fresh confirmed grant shall be issued to the objector **WILKISTER SHIUNDU MALILO**. Plot number **MARAMA/SHINAMWENYULI/1225** shall be registered in the names of the objector. The objector is hereby warned that she should pursue the pending case in court so that she can sort out any issues relating to her deceased father. Each party to meet his/her own costs.

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

SAID J. CHITEMBWE
J U D G E