



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**SUCCESSION CAUSE NO.167 OF 2012**

**IN THE MATTER OF THE ESTATE OF CHARLES KUBADI MASAKHALIA (DECEASED)**

**VINCENT JUMA AWORI.....APPLICANT**

**VERSUS**

**PRISCA ANYANGO KUBADI.....RESPONDENT**

**R U L I N G**

Charles Kubadi Masakhalia, the deceased to whose estate these proceedings relate died on 26<sup>th</sup> January 1983. Prisca Anyango Kubadi, the Respondent herein petitioned this court to administer the estate of the deceased. She filed the petition before the then **Resident Magistrate's Court at Busia in Succession Cause No.84 of 1986**. In the petition, she listed beneficiaries of the deceased as herself, the widow of the deceased, and her three (3) sons namely, Andrew Kubadi, Dennis Okello and Peter Wesonga. The only property that was listed as belonging to the estate of the deceased was a parcel of land registered as LR.No.Samia/Wakhungu-Odiado/617 (hereinafter referred to as the suit parcel of land). The Respondent was issued with the grant of letters of administration intestate on 13<sup>th</sup> August 1987. The grant was confirmed on 17<sup>th</sup> June 1992. The court ordered the property that comprised the estate of the deceased to be distributed equally between the three (3) sons of the deceased.

It now emerges that the Respondent did not inform some of the persons who are residing on the suit parcel of land of the Succession proceedings before court. On 2<sup>nd</sup> October 2012, Vincent Juma Awori, the Applicant herein filed an application before this court seeking to have the grant issued to the Respondent revoked or annulled on the grounds that the same was fraudulently obtained by concealment of material facts. The Applicant further contends that the proceedings to obtain the said grant were defective in substance. In the affidavit in support of the application, the Applicant states that the Respondent had concealed the facts that the suit parcel of land was family land and was originally owned by one Masakhalia Awori (deceased) who was survived by three (3) sons namely, Awori Masakhalia, Charles Alon Masakhalia and Daniel Okong'o Masakhalia. He deponed that although the deceased's husband was registered as the owner of the suit parcel of land, the same was partially occupied by the family of Daniel Okong'o Masakhalia. He further stated that the dispute was referred to the Funyula Land Disputes Tribunal and it rendered a decision recognizing the right of the children of Daniel Okong'o Masakhalia and Ouma son of Obilo to occupy and be registered as owners of distinct portions of the suit parcel of land. The tribunal's award was filed in court and was adopted as a judgment of the court in **Busia PMC Land Case No.122 of 2009 Vincent Juma Awori -Vs- Dennis Okello Kubadi & 2 Others**. It is for this reason that the Applicant prays that this court annuls the grant that was issued to the Respondent so that the issue regarding who is entitled to inherit the suit parcel of land shall be determined by the court.

In her response, the Respondent in a replying affidavit filed in court on 18<sup>th</sup> October 2012 deponed that the application before the court was incompetent and ought to be dismissed. She stated that the Applicant was a distant relative of her deceased husband and had no right to claim any interest in the suit parcel of land. She reiterated that she had rightfully petitioned the court to inherit the property owned by the estate of the deceased. She denied that there were any proceedings which had declared that the Applicant was entitled to ownership of part of the suit parcel of land. She was of the view that the Applicant was not sincere in his claim since his actual reason for seeking to annul the grant was so that he can sell part of the suit parcel of land to persons whom he has already identified. She deponed that the Applicant had no right

to agitate the case on behalf of Daniel Okong'o Masakhalia or Ouma son of Obilo since both of them are deceased and the Applicant had not obtained grants of letters of administration intestate to administer their respective estates.

During the hearing of the application, this court heard rival oral submission made by Mr. Juma for the Applicant and by Miano for the Respondent. They basically reiterated the contents of the application and the affidavits filed thereto by their respective clients. This court has considered the facts of this case. The issue for determination by this court is whether the Applicant established a case to enable this court annul or revoke the grant that was issued to the Respondent. Certain facts are not in dispute in this case. It is not disputed that the suit parcel of land was registered in the name of the deceased. It is further not disputed that the Respondent, as the widow of the deceased, was entitled to petition the court to be issued with grant of letters of administration intestate in respect of the estate of the deceased. As correctly argued by the Respondent, she had priority to petition this court to administer the estate of the deceased pursuant to **Section 66(a)** of the **Law of Succession Act**. From affidavit evidence, it was clear that the Respondent was not truthful when she stated that the only beneficiaries of the estate of the deceased were her three (3) sons.

From the proceedings of the Funyula Land Dispute Tribunal, it was apparent that there were other occupants of the suit parcel of land which was registered in the name of the deceased. The Respondent did not disclose this fact to the court when she filed the petition to be issued with a grant of letters of administration. It is evident that the persons occupying the suit parcel of land had some right or entitlement to reside on the land. The Applicant claims that they were entitled to reside on the suit parcel of land on the basis that the same was family land which was previously owned by their paternal grandfather. This is an issue that will be resolved by the court when it will hear the case in regard to who shall be entitled to inherit the suit parcel of land, and if so, to what extent.

So as to clear the way for the real dispute between the Applicant and the Respondent to be resolved, this court hereby revokes and annuls the grant of letters of administration intestate which was issued to the Respondent on 13<sup>th</sup> August 1987 and confirmed on 17<sup>th</sup> June 1992. All the steps that have been taken as a consequence of the said grant of letters of administration intestate and confirmation thereof is hereby set aside. This includes the cancellation of any transfers that would have been effected pursuant to the said documents. This court appoints the Applicant, Vincent Juma Awori and the Respondent, Prisca Anyango Kubadi to be the administrators of the estate of the deceased. The Respondent is ordered to file an application for confirmation of grant within thirty (30) days of the date of this judgment. She shall serve the same upon the Applicant. The Applicant shall be at liberty to file an affidavit of protest if he shall not be in agreement with the mode of distribution proposed by the Respondent. If there shall be any dispute regarding the distribution of the suit property, the same shall be determined by this court. There shall be no orders as to costs.

**L. KIMARU**

**JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 27<sup>TH</sup> DAY OF JUNE 2013.**

**F. TUIYOT**

**JUDGE**