



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 560 OF 2011**

**IN THE MATTER OF THE ESTATE OF JEREMIAH ODERA AMAPESA  
.....DECEASED**

**JULIUS ONJIRO ODERA AMAPESA ..... 1<sup>ST</sup> PETITIONER**

**FRANCIS OTIANGALA MAPESA ..... 2<sup>ND</sup> PETITIONER**

**V E R S U S**

**EMILY JUDITH ODERA .....RESPONDENT**

**R U L I N G**

In his application dated 8.10.2012 the 1<sup>st</sup> petitioner is seeking an order restraining the respondent from dealing with plot numbers **BUTSTOTSO/SHIBEYE/1534** and **MARAMA/LUNZA/668**. The applicant is also seeking an order that the respondent renders an account relating to the deceased's estate. The application is supported by the applicant's affidavit sworn on the 8.10.2012. The respondent filed a replying affidavit sworn on the 7.2.2013. Parties agreed to proceed with the application by way of written submissions. None of the parties complied with that consent.

The record shows that no grant has been issued to the petitioners. Rose Isichi and Everlyne Ngisu filed an objection to the making of the grant dated 26.10.2011. The basis upon which the application is being made is that the respondent sold plot number **ISUKHA/SHIRERE/4814** which was part of the estate and that she has also moved from her matrimonial home and built a house on plot number **MARAMA/LUNZA/668**. The applicant also contends that the respondent is cultivating sugarcane on plot number **MARAMA/LUNZA/1534** and she is receiving proceeds from Mumias Sugar Company. The applicant avers that the respondent has fraudulently transferred plot number **ISUKHA/SHIRERE/4814** to third parties while this suit is still pending. In her response the respondent contends that she is the widow of the deceased while the applicant is the deceased's son. According to her plot number **BUTSOTSO/SHIBEYE/1534** did not belong to the deceased. She used to operate a joint account with the deceased at Mumias Sugar Company where sale proceeds for sugarcane harvested from plot number **BUTSTOTSO/SHIBEYE/1536** used to be deposited. She has never sold plot number 1536. She moved to plot number **MARAMA/LUNZA/668** in consultation with the family. Plot number 668 and 1536 are still registered in the names of the deceased and charged to financial institutions. The charges have not been discharged. With regard to plot number **ISUKHA/SHIRERE/4814** the issue was exhaustively discussed and settled at a meeting held on 12.11.2011 and the applicant participated. The plot is now currently registered in the names of a third party. It is also the respondent's contention that the applicant is receiving rent from other properties located in Nairobi and he should also render accounts.

From the documents annexed to the pleadings plot number **MARAMA/LUNZA/668** measuring **3.4** Hectares was registered in the names of the deceased. The plot was charged in 1988 to the Standard Chartered Bank. Plot number **BUTSOTSO/SHIBEYE/1536** measuring **6.23** Hectares was also registered in the names of the deceased and the same was charged but the official search does not clearly indicate the name of the chargee. With regard to plot number **ISUKHA/SHIRERE/4814** measuring **0.17** Hectares it is indicated from the extract from the Kakamega Land registry that it belonged to the deceased. On the 27.7.2011 the respondent got herself registered as the owner and on the 7.8.2011 she transferred it to one **DANSON NDUNGU KAMAU** for KShs.100,000/= . The record shows that the deceased also owned plot number **BUTSOTSO/SHIBEYE/7117** measuring **2** acres,

**MARAMA/LUNZA/1622** measuring 5.6 Hectares and **BUTSOTSO/BUKURA/861** measuring 3 acres.

The deceased died on the 18.5.2011. The record shows that he was survived by five widows and several children. The estate has not been distributed as no grant has been issued. It is clear from the record that plot number **ISUKHA/SHIRERE/4814** was transferred to the respondent after the death of the deceased yet no grant has been issued. The contentions by the respondent that the issue was deliberated upon by family members on the 12.11.2011 cannot justify the illegal manner in which the property changed hands. That amounts to intermeddling of the estate before the grant has been issued. In order to speed up this succession cause I do order that the transfer in relation to plot number **ISUKHA/SHIRERE/4814** be cancelled as the same was illegal and the plot to revert to the names of the deceased. With relation to the other prayers the application dated 8.10.2012 I do find that there is no need of granting them at this moment as the deceased left enough property that can be distributed to each of the widows and her children if any. There is no need of restraining the respondent from dealing with plot number **MARAMA/LUNZA/668** as the applicant acknowledges the respondent is already in occupation. In order to speed up the finalization of this matter I do order that the petitioners pay the costs of advertising this cause in the Kenya Gazette. Thereafter parties shall be at liberty to make applications as to how they would like the estate to be distributed.

In the end the application dated 8.10.2012 partly succeeds. The transfer of plot number **ISUKHA/SHIRERE/4814** is hereby nullified and the property shall revert to the deceased. Each party shall meet his/her own costs otherwise the rest of the prayers in that application are hereby dismissed.

**Delivered, dated and signed at Kakamega this 25<sup>th</sup> day of July 2013**

**SAID J. CHITEMBWE**

**J U D G E**