

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE 441 OF 2002

IN THE MATTER OF THE ESTATE OF JOSHUA MANGULA OSORE – DECEASED

ALBERT SORE MANGULA PETITIONER

VERSUS

JOSPHAT WANANGWE NASITSI OBJECTOR

R U L I N G

The late **JOSHUA MANG’ULA OSORE** died on the 6.3.1978 at Lunza sub-location. He was survived by three sons namely- **NATHAN NAMAYI MANGULA, WILSHAM ANANGWE MANGULA** and **ALBERT SORE** (the petitioner). Albert petitioned this court for letters of administration so as to enable him inherit plot number **MARAMA/LUNZA/54**. His brother **WILSHAM ANANGWE** objected to the petitioner’s request and stated that he was living on that plot. Unfortunately Wilsham passed on before the dispute could be resolved. His son **JOSPHAT WANANGWE NASITSI** took over the objection and filed an affidavit in protest sworn on the 15.1.2010.

The matter was determined through oral evidence. According to Albert the petitioner their late father had distributed his land to his three children. The objector’s father Wilsham was given plot number **MARAMA/LUNZA/52** and he planted the entire plot with sugarcane. It is his evidence that although Wilsham died and was buried on plot number 54, his proper place of abode was plot number 52. His other brother **NATHAN** was given his own plot. The objector has other brothers who live on plot number 52 but the objector has refused to move to that plot. It is the petitioner’s further evidence that the land was subdivided in 1974. Plot number 54 was retained by their late father and being the last born he was not given any land.

The petitioner brought in his witness **NATHAN NAMAYI MANGULA** who is his elder brother. His evidence is that they were three sons from the same father. When the land was subdivided the petitioner was still young. According to him the petitioner was born in 1946 and the land was divided in 1960. It is his evidence that their late father was living with the petitioner and had promised to give plot number 54. The objector’s father Wilsham was given his own land measuring 2 ½ acres. PW2 himself was given his own plot this being plot number **MARAMA/LUNZA/51** measuring 2 acres. Plot number 54 is quite big measuring over 4 acres. It is his further evidence that the petitioner was shown a place to build on plot number 54 by their late father. The objector has no claim over plot number 54.

The objector’s evidence is that the petitioner is his uncle. He is claiming 1 ½ acres out of plot number 54 because his father used to live there. His late father and mother were buried on plot number 54. He is also cultivating the land. When the petitioner filed the succession cause he did not consult him. His brothers reside on plot number 52. His other two brothers **LIVINGSTONE OKULA** and **JOSHUA MANGULA** reside on plot number 54.

The main issue for determination is whether the deceased had distributed his estate before his death and whether the objector should get part of plot number **MARAMA/LUNZA/54**. When the petitioner filed this cause he was issued with a letter by the Marama West Location Chief dated 2.9.2002. According to the letter the petitioner’s two other brothers were already given their own plots. It is the evidence of Nathan who is a brother to the petitioner and late Wilsham that each of them was given his

own plot. According to the evidence on record it is clear that the deceased subdivided his land into three plots namely **MARAMA/LUNZA/51, 52 and 54**. The objector's father was given plot number 52 and according to the objector's evidence some of his brothers reside on that plot. It is also clear that plot number 54 is bigger than the other two portions. The petitioner is the last born son of the deceased and was residing with his father. Although plot number 54 is bigger than the other plots it is clear that the deceased had his own reasons as to why he divided the land in the above manner. The fact that plot number 54 is bigger than plot numbers 51 and 52 does not mean that the objector's father was not given his own portion. Indeed Nathan was given smaller portion than Wilsham and he is satisfied.

Given the evidence on record, I am satisfied that the deceased distributed his estate before his death. The objector's father given his own land and he did not question his father why that plot was smaller than plot number 54. The suit land **MARAMA/LUNZA/54** should be inherited by the petitioner **ALBERT SORE MANGULA** and the objector and his brothers should vacate from that plot. The grant is hereby confirmed and the petitioner shall be the sole beneficiary of plot number **MARAMA/LUNZA/54**. Each party shall meet his own costs.

Delivered, dated and signed at Kakamega this 23rd day of October 2013

SAID J. CHITEMBWE

J U D G E