

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION 393 OF 2002

IN THE MATTER OF THE ESTATE OF DANIEL ANYEMBE alias NANDAH

CAUDENCIA MAKOSHI MANGO APPLICANT

V E R S U S

JAVAN KUYA ANYEMBE 1ST RESPONDENT

LILY OWANO 2ND RESPONDENT

DIRECTIONS

There are two applications filed in this matter. One is dated 20.9.2012 while the other one is dated 29.1.2013. Parties relied on the applications and respective replies thereto and urged the court to right a ruling. I have gone through the court file and do find that the grant was confirmed on the 24.6.2003 when one of the beneficiaries **JAVAN KUYA ANYEMBE** was not present. Similarly on the 25.7.2012 when some orders were made which had the effect of replacing the initial petitioner who is now deceased with **JAVAN** and his sister in-law **GAUDENCIA MAKOSHI MANGO**, Javan was absent. The essence of the pending application is that the deceased had given one of the beneficiaries plot number **MARAMA/INAYA/791** before his death. Javan contends that the distribution was not fair as that gift was not taken into account. I have read the court file and do find that it will be unfair for me to write a ruling based on the information on the file without hearing oral testimonies from the parties.

I therefore order that the matter shall proceed by way of oral evidence. Javan shall be the plaintiff while Gaudencia shall be the defendant. Parties are at liberty to call witnesses. The petition and all documents filed by Gaudencia shall be the defence while those documents filed by Javan shall be the plaintiff. The court will only be able to understand the dispute and make an informed decision after hearing the parties herein. The matter to proceed by way of oral evidence.

DATED AT KAKAMEGA THIS 14th DAY OF NOVEMBER 2013

SAID J. CHITEMBWE

J U D G E