



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 42 OF 2010

IN THE MATTER OF THE ESTATE OF YONA MUKUNGU WEAS alias MUKUNGU WESA (DECEASED)

B E T W E E N

SULPHANOS ANYEMBE MUKUNGUPETITIONER

V E R S U S

AGGREY B. L. MUSIEGAAPPLICANT

AND

JARED OMBEE MUKUNGUOBJECTOR

R U L I N G

The application dated 29.11.11 seeks orders that the applicant be enjoined in these proceedings, that applicant be accepted as a beneficiary of the estate of the deceased and that the applicant's share of two equal portions (of land) each measuring 0.45 Hectares be allocated and transferred to him from the deceased's estate comprised in the title known as MARAMA/BUCHENYA/659.

I have read the application and the affidavit in support sworn by the applicant on 29.11.11. The applicant's case is that he is a beneficiary of the estate of YONA MUKUNGU WESA, the deceased to whose estate the proceedings herein relate. That the applicant bought a portion of land from land parcel NO. MARAMA/BUNCHENYA/659 from one FRANCIS KANGU MUKUNGU, a son to the deceased. That the applicant bought another portion of the above stated property from the late PATRICK ANEKEYA MUKUNGI, also a son to the late YONA MUKUNGU WESA.

That the applicant is already in possession of the two portions of land he bought and has developed the same by planting sugarcane. That the applicant has also expended money by financing the Succession Cause, survey costs for the suit land and meeting the late PATRICK ANEKEYA MUKUNGU's medical expenses.

The applicant saw the objection being raised as malicious as the applicant's claim according to the applicant would not prejudice the interest of any dependant who is lawfully entitled to the estate.

The application is not opposed by the Petitioner.

The application is opposed by JARED OMBEE MUKUNGU, the objector who has filed a Summons for revocation and/or annulment of the grant herein. The said objector has filed an affidavit sworn on 16.1.12

objecting to the application. In the said affidavit, it is deponed that the applicant is not a beneficiary of the estate of the deceased, the late YONA MUKUNGU WESA and should not to be enjoined in this case. That the present application is meant to delay the proceedings herein and that the applicant was sneaked in claiming purchaser's interest when the family of the late Anekeya is not aware of the sale to the applicant.

I have considered the application, the reply to the same and the submissions by Mr. Musiega Advocate who appeared in person as the applicant and also considered the submissions of Mr. Namatsi for the Objector. Mr. Lugadiru advocate for the Petitioner did not oppose the application.

It is common ground that the applicant did not purchase the portions of land in question from the late YONA MUKUNGU WESA alias MUKUNGU WESA whose estate is the subject of these proceedings. The applicant has admitted that he bought one portion of land from one FRANCIS KANGU MUKUNGU who is a son to the deceased. The applicant has also stated that he bought the other portion of land from the late PATRICK ANEKEYA MUKUNGU, a son to the deceased (YONA MUKUNGU WESA). It is also clear that the said purchases took place in the year 2010, long after the death of the deceased (YONA MUKUNGU WESA) in the year 1985. The question for the court to determine is whether in the circumstances the applicant is entitled to be enjoined in these proceedings as a beneficiary. My answer is no. The applicant did not purchase the portions of land in question from the deceased (YONAH MUKUNGU WESA). The applicant is neither a beneficiary nor a liability in the estate of the deceased (YONA MUKUNGU WESA).

The selling of some of the portions of the land which is part of the estate of YONA MUKUNGU WESA by his sons before distribution amounts to intermeddling. **Section 45** of the Law of Succession Act provides that no person should handle, take possession, dispose off or otherwise intermeddle with the free property of a deceased person unless authorized by law or by a grant of representation.

With the foregoing, the application fails with costs.

Delivered, dated and signed at Kakamega this 8th day of March, 2012.

B. THURANIRA JADEN
J U D G E