



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KAKAMEGA**

**Succession Cause 278 of 2007**

**IN THE MATTER OF THE ESTATE OF KENZIA DALITSU alias KETSIA DALIDZU –  
DECEASED**

**A N D**

**BROWN OTENGO ASAVA**

**ARTHUR MWANZI ASAVA ..... PETITIONERS**

**V E R S U S**

**JEMENY MUDAKI ASAVA ..... OBJECTOR**

**R U L I N G**

The objector filed his application dated 3rd November 2008 seeking revocation of the grant issued to the petitioner herein. The applicant contends that the application for the grant by the petitioners was not served upon the objector personally and that the petitioners had already obtained their respective shares of inheritance from their father. The plot in dispute, plot number **KAKAMEGA/MABLE/532** was registered in the name of the parties' mother and the objector, being the last born was entitled to that plot. The objector contends that if the petitioners are to be given a share of the suit property, this would amount to double sharing.

Parties herein took directions and agreed to file written submissions. Only the petitioners managed to do so. I do note that the objector's counsel, Mr. Khakula was in court on 19<sup>th</sup> May 2011 when parties agreed to file written submissions. The matter was fixed for mention on 23<sup>rd</sup> November 2011 but no submissions had been filed by the objector. Mr. Elung'ata held Mr. Khakula's brief who was said to be out the country. This court granted the objector another thirty (30) days to file his submissions but no such submissions were filed.

The essence of the objection is that the petitioners are the elder brothers of the objector. The objector contends that the petitioners were given their inheritance by their late father and the suit property was registered in the name of the parties' mother, Ketsia Dalinzu Asava. Being the last born, the objector maintains that he is entitled to the deceased's estate to the exclusion of his two brothers.

The proceedings herein show that the issue as to whether the petitioner had already received their respective inheritance was dealt with in Succession Cause number **KAKAMEGA 45 'B' of 1990** Jemeny Mudaki Asava –vs- Brown Otengo Asava and Another. The court in that matter revoked a grant that had been issued to the objector in relation to the deceased's estate. From the pleadings in that matter which was consolidated with this cause by consent on 11<sup>th</sup> November 2010, it is indicated that each of the three sons were given their respective plots namely **KAKAMEGA/LYADUYWA/1268, 1265** and **1269** with the objector selling his plot number **1269**.

The petitioners herein distributed plot number **KAKAMEGA/ MBALE/532** equally amongst the three sons of the deceased. I do find that the distribution is fair as the objector is getting a share equal to the other beneficiaries. There is no merit in the application for revocation of the grant and the said application dated 3<sup>rd</sup> November, 2008 is hereby dismissed. Since the parties are brothers, I do not wish to burden anyone of them with costs. Each party shall meet his own costs. It is so ordered.

**Delivered, dated and signed at Kakamega this 10<sup>th</sup> day of May 2012**

**SAID J. CHITEMBWE**  
**J U D G E**