



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

Citation Cause 853 of 2007

JAPHEW WANYAMA MAKIRA CITOR

A N D

KERESTINA N. WETIBA & 6 OTHERS CITEES

RULING

This cause initially began by a Citation dated 19.10.07 filed by JAPHEW WANYAMA MAKIRA who was issued with a grant of letters of Administration dated 29.1.09. The said grant was confirmed on 19.11.09.

Following the filing on 27.4.10 of the Summons for revocation and/or annulment of grant dated 26.4.10, the grant of letters of Administration confirmed on 19.11.09 was revoked and a new grant issued jointly in the names of JAPHEW WANYAMA MAKIRA and PATRICK WERE WETIBA.

Thereafter, PATRICK WERE WETIBA, on 5.9.11 filed the Summons for confirmation of grant dated 18.7.11. The applicant, PATRICK WERE WETIBA proposed to distribute the estate of the deceased, WETIBA WERE as follows:-

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|----------------------------------|-----------------------------|-------------|
| “(a) PATRICK WERE WETIBA | BUNYALA NAMIRAMA/788 | 8.028 ACRES |
| (b) BENSON NABISWA WETIBA | “ | “ “ 5 ACRES |
| (c) MOSES WANJUZI WETIBA | “ | “ “ 5 ACRES |
| (d) PATRICK NAVISWA WETIBA | “ | “ “ 5 ACRES |
| (e) DAVID BARASA WETIBA
ACRES | “ | “ “ 2¼ |
| (f) JANE KHALEMESI WETIBA | “ | “ “ ½ ACRE |
| (g) ALICE NAWANJAYA | “ | “ “ ½ ACRE |
| (h) CHRISTINE NAKHUMICHA WETIBA | “ | “ “ ¼ ACRE |

(i) JANE NASIKE WERE	<u>BUNYALA/NAMIRAMA/784</u>	WHOLE
(j) JOHNSON UKHEVI WETIBA	<u>PLOT NO. 176 CHEKATA/SIKAONE</u>	6 ACRES
(k) GILBERT OKHALO WETIBA	“ “ “ “	8 ACRES
(l) NELSON WETUNDU WETIBA	<u>PLOT NO. 174(347)</u>	
	<u>MOISBRIDGE –CHEKATA/SIKAONE</u>	10 ACRES
(m) MARK NANDI	“ “ “	2 ACRES
(n) SHADRACK OKOVA WETIBA	<u>PLOT NO. 173 (348)</u>	
	<u>MOISBRIDGE – CHEKATA/SIKAONE</u>	14.4 ACRES
(o) DAVID BARASA WETIBA	“ “ “	6.4 ACRES
(p) GILBORD WETIBA	<u>PLOT NO.172 (239)</u>	
	<u>MOISBRIDGE-CHEKATA-SIKAONE</u>	6 ACRES
(q) WICKLIFFEE WERE WETIBA	“ “ “	4 ACRES
(r) GEOFREY WETIBA	<u>PLOT NO. 171 (352)</u>	
	<u>MOISBRIDGE-CHEKATA-SIKAONE</u>	5 ACRES
(s) ELIAS LUBAVU WETIBA	“ “ “	5 ACRES
(t) SIMON LANG’AYO ANDEMA	“ “ “	1½ ACRES
(u) MARK SIKUTWA	<u>N/KABRAS/KILIBOTI/114</u>	
WHOLE”		

The Respondent, JAPHEW WANYAMA MAKIRA objected to the proposed distribution. In his affidavit of protest, the Respondent avers that he is a beneficiary of the estate of the deceased and that he is the one entitled to L.R. NO. KABRAS/KILIBOTI/114. That one MARK SHIKUTWA who is named as the beneficiary of L.R. NO. KABRAS/KILIBOTI/114 is a stranger to the estate of the deceased. That the distribution of L.R. NO. KABRAS/KILIBOTI/114 should be held in abeyance pending the conclusion of other disputes emanating from the said parcel of land. The Respondent has no objection to the proposed distribution of the rest of the estate.

The Applicant, PATRICK WERE WETABA, filed a supplementary affidavit stating that the respondent is not a son or relative of the deceased. That the Respondent has not disclosed his relationship with the deceased. That Kakamega HCCC. 167 OF 1985 was dismissed in 1996 and that judgment still stands. That an Appeal filed in Kisumu Court of Appeal, Civil Appeal No. 304 of 1998 was struck out in the year 2000.

I have considered the affidavits and the submissions. The affidavit evidence that the Respondent is not a son or relative to the deceased is not contested. The Respondent stated in his affidavit that he is a beneficiary to L.R. NO. N/KABRAS/KILIBOTI/114 but did not state his relationship with the deceased.

The Respondent proposed that the distribution of KABRAS/KILIBOTI/114 be held in abeyance. That is not reasonable because there is no evidence of any suit that is pending in relation to the said parcel of land. Consequently, the protest is struck out. The estate of the deceased shall be distributed in accordance with the affidavit in support of summons for confirmation of grant dated 18th July, 2011 and filed in court on 5th September, 2011.

Taking into account the history of this cause, each party to bear his own costs.

Delivered, dated and signed at Kakamega this 13th day of June, 2012

B. THURANIRA JADEN
J U D G E