

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 501 of 2004

IN THE MATTER OF THE ESTATE OF JOSHUA INDIATSI MAHAGWA – DECEASED

FELISTUS O. M. INDIATSI 1ST PETITIONER

MELLON KAVOLE MAHAGWA 2ND PETITIONER

V E R S U S

JACOB MAHAGWA OBJECTOR

RULING

The objector filed an application dated 8th March 2005 seeking revocation or annulment of the grant issued to the petitioner. The grounds for the application are that the proceedings that led to the issue of the grant were defective and that some of the beneficiaries did not give their consent before the succession cause was filed. Further the objector maintains that the administrator has failed to distribute the estate to other beneficiaries and that her mental status is in doubt due to change of behavior.

Parties agreed to have the application proceed by way of oral evidence. The objector's testimony is that the 1st petitioner is his mother and the 2nd petitioner is his younger sister. When the succession cause was filed his consent was not sought and other beneficiaries have been left out. He used to work with his deceased father and he stays in one of the deceased's properties vide plot number **BLOCK/90/MILIMANI KAKAMEGA**. Initially he used to live on plot no. **KAKAMEGA/BUTSOTSO/3383** for over 15 years. The two plots were left under his care by his late father. The petitioners have sold part of the estate and the objector would like to be given the above two properties. He was given plot no. **BUTSOTSO/INDANGALASIA/410** by the deceased during his lifetime. He sold a lorry registration no. KQK 706 BEDFORD as a scrap for KShs.50,000/=. All his sisters are married and the petitioners have failed to distribute the estate.

PW2, SHEM SASIKA used to work for the deceased as a driver for about one year. His evidence is that the deceased had a house in Kakamega Town and at Lutonyi. The objector was the one working with his late father as he was not employed elsewhere. He used to sell in his father's shop and assist him putting up the houses. PW2 worked for the deceased in the year 2001-2002 and knows the 1st petitioner as the deceased's wife who used to work as a teacher but retired to do farming.

The 1st petitioner's evidence is that the objector is her son. She got married to the deceased in 1996 and got other children. The objector was given plot no. **BUTSOTSO/INDANGALASIA/410** and **1475**. Together with her late husband they paid dowry for the objector and assisted him in life. The house on plot no. **KAKAMEGA/BUTSOTSO/3383** was built by the deceased. The house on **KAKAMEGA BLOCK/90 – MILIMANI** was built by herself and the deceased when the objector was only two years old. The deceased did not give the objector plot no. **3383** and **KAKAMEGA BLOCK/90** as alleged by the objector. She used to do business with her late husband and produced a certificate of registration issued on 28th July 1997 in their joint names. The deceased gave land to her sons and that she has not distributed any land to her daughters. The estate can only be distributed after she passes on as she is sickly and spends over KShs.50,000/= on medication which amount comes from the estate. The objector is not the only son and was included in the succession cause. Two of her sons are deceased while there are three other sons including the objector and daughters.

DW2, MELON FLORENCE MAHAGWA is the 2nd petitioner. Her evidence is that she is a public servant working with the Kenya Plant Health Inspectorate. She contends that the 1st petitioner is capable of administering the estate as part of the money she collects assists her in medication. None of the daughters have been given land by the 1st petitioner. **DW3, DAN KIDIA MAHAGWA** is a brother to the objector. He testified that their late father gave them land to settle. The objector was given two plots and he has no problem in the estate being managed by the 1st petitioner. Currently he is not getting any proceeds from the estate and the allegations that their mother is of unsound mind are not true. The objector used to benefit from the Lutonyi plot where there was a fuel pump but he ran down the business.

DW4, ALICE INDIASI NZIAVAE is an elder sister to the objector and a teacher by profession. According to her evidence the objector used to live in a servant quarter at the Kakamega Milimani house but when their father died he moved to the main house and rented the servant quarter from where he collects rent. The deceased gave the objector two plots and built a house for him on one of the plots to settle with his wife but he left the house which later collapsed. There are twelve beneficiaries and the objector should not interfere with the running of the estate.

This is an application for the revocation of the grant issued to the petitioners. The record shows that a confirmed grant was issued on the 11th of February 2005. The grant gives a list of several properties that forms part of the deceased's estate. All the properties were to be registered in the names of the two petitioners. In the original petition for the issue of the grant the petitioners listed the deceased's children namely three sons, and seven daughters. The petitioner testified that two other sons are deceased. The deceased's estate is elaborated in the petition. The objector contends that he was not consulted when the petition was filed and that part of the estate has been sold. The 1st petitioner produced evidence that the allegation that the Milimani property was sold is untrue and produced an official search that shows that it is in the names of the petitioners and there are several other entries related to mortgage transactions. The petitioners produced official searches that show that none of the deceased's estate have been sold. The 1st petitioner participated in the acquisition of part of the estate and there is no objection from her other children in her administering the estate. Although the objector testified that he represents his other brothers and sisters none of them testified as witnesses in support of his contentions.

The 1st petitioner testified in court and I had the advantage of seeing her. There is no proof that her mental capacity is limited. She is a former teacher and capable of administering the estate. Since the other beneficiaries are agreeable in having the estate administered by the petitioners I do not find that the grant should be nullified. The objector has not established that the deceased's estate is being wasted and/or disposed off. The objector should be patient as his mother is sickly and uses proceeds from the estate for medication. None of the other beneficiaries has called for immediate distribution of the estate.

In the end I do find that the application for revocation/annulment of the grant lacks merit and the same is dismissed. Since this is a family dispute there shall be no orders as to costs.

Delivered, dated and signed at Kakamega this 26th day of July 2012

SAID J. CHITEMBWE
J U D G E