



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Miscellaneous Succession Cause 340 of 2001

IN THE MATTER OF THE ESTATE OF OBED MUTETI NGUI (DECEASED)

1. NGIKI MUTETI

2. DAVID MUTETI.....PETITIONERS

AND

BONIFACE MAWEU KALELI.....OBJECTOR

RULING ON DISTRIBUTION

1. Letters of administration intestate to the estate of the Deceased herein, OBED MUTETI NGUI, were issued to the Petitioners jointly on 20th May 2002. The estate of the Deceased comprised essentially one parcel of land known as **Plot No. 4, Kitunga** measuring approximately 80 acres.
2. By **summons dated 18th April 2005** the Petitioners applied for confirmation of the grant. In the proposed schedule of distribution annexed to the supporting affidavit, the Objector (or Protester) herein, BONIFACE MAWEU KALELI, was named as one of the beneficiaries to get 3 acres.
3. The said Objector then filed an affidavit of protest against the proposed distribution sworn on 19th October 2005. In it he deponed, *inter alia*, that before he died the Deceased had sold to him some five (5) hectares on 28th September 1993 to be excised from his land. He annexed various “agreements” to that effect. He also annexed the proceedings and award of the **Machakos Land Disputes Tribunal** in its **Case No. 23 of 2002** (being a claim filed by the Deceased’s widow, NGIKI MUTETI, against the Objector. The Tribunal had ruled that the Objector had purchased from the Deceased five (5) **acres** and not five (5) **hectares**. He says that he appealed the said decision before the Provincial Land Disputes Appeals Committee at Embu, which appeal is pending. He did not provide any evidence of that appeal.
4. In subsequent proceedings herein the Petitioners indicated that they are prepared to give to the Objector five (5) **acres**. The Objector has insisted that he purchased five (5) **hectares** and not five (5) acres, and that is what he wants from the estate of the Deceased.
5. Learned counsels appearing for the Petitioners and the Objector have agreed that the only issue to be determined in this application for confirmation of grant is whether the Objector purchased from the Deceased five (5) **acres** or five (5) **hectares**. His entitlement in the Deceased’s estate will be determined by the decision on that issue. This is not an idle issue. **One hectare measures approximately 2.7 acres**. So, in effect the Objector is demanding to get **13.5 acres** from the estate of the Deceased as opposed to only five!

6. Learned counsels made written submissions, which I have duly considered. I have also perused the English translations of all the agreements annexed to the affidavit of protest. The original agreements were in Kikamba.
7. The issue whether the Objector bought from the Deceased and his sons five (5) **acres** or five (5) **hectares** was taken before the Machakos Land Disputes Tribunal by the Deceased's widow, NGIKI MUTETI, in early 2002 after the Deceased's death. The Tribunal, after hearing the parties and after examining the various documents written in Kikamba language decided that the Objector purchased from the Deceased and his sons five (5) **acres** and not five (5) **hectares** as he claimed.
8. The proceedings before the Machakos Land Disputes Tribunal were quasi-judicial, and cannot simply be ignored. Though the Objector says that he appealed against the decision of the Tribunal to the Embu Provincial Appeals Committee, he did not provide evidence of such appeal, or the outcome thereof.
9. I do not think it would be proper for this court to adjudicate again an issue that has already been canvassed and decided by a quasi-judicial tribunal which was in a better position than this court to decide, given the circumstances of the parties before them, whether the land-sale transaction was likely to have been in terms of **hectares** or **acres**.
10. In the circumstances I rule, just as the Machakos Land Disputes Tribunal did in Case No. 23 of 2002, that the Objector purchased from the Deceased and his sons five (5) **acres** and not five (5) **hectares**. He will therefore get five (5) acres from the estate of the Deceased.
11. The grant is thus confirmed upon the terms of distribution proposed by the Petitioners, except that the Objector, BONIFACE MAWEU KALELI, shall get five (5) **acres** of land from the estate of the Deceased. It is so ordered.
12. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thank God I have now regained my full health.

DATED AT NAIROBI THIS 6TH DAY OF SEPTEMBER 2012

H. P. G. WAWERU
JUDGE

COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28TH DAY OF SEPTEMBER 2012

ASIKE-MAKHANDIA

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JUDGE