



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**Succession Cause 50 of 2007**

**IN THE MATTER OF THE ESTATE OF**  
**JAMIN NKOKHO.....DECEASED**

**AND**

**IN THE MATTER OF**  
**ROSE AYUMA WANAMI.....PETITIONER/RESPONDENT**

**~VRS~**

**JOHN HENRY WANAMI.....OBJECTOR/APPLICANT**

**RULING**

This dispute involves the estate of the deceased Jamin Wanami Nkokho who died intestate on 25/8/2005. He left land parcels Bokoli/Mukuyuni/1047 and Bokoli/Mukuyuni/1020. He was survived by a widow Rose Ayuma Wanami, the Petitioner, whose co-wife is Alice Wanami. They have children. The objector John Henry Wanami was one of the brothers of the deceased. The parcels above belonged to their late father. The Petitioner was registered to hold the parcels in trust for himself and his brothers.

When the Petitioner applied for a grant the objector filed a notice of objection which was followed by summons for revocation and/or annulment of the grant. He was essentially seeking to be a co-administrator. Subsequently, the parties agreed that they both be appointed as co-administrators and the objection be deemed as settled. The parties were at liberty to apply for the confirmation of the grant.

On 26/4/2012 the Petitioner applied that the Objector and all those claiming under him be restrained from encroaching on, tilling, trespassing, occupying, using or in any other manner interfering with 7 ½ acres of parcel 1047 which she claimed to be her entitlement. She claimed that the position obtaining at the time that the deceased died was that the 7 ½ acres had been given to her and she was in occupation; that the deceased had allocated respective parcels to his brothers who included the objector. Her case was that she had moved to stay in Moisbridge owing to squabbles in the family. She had left the 7 ½ acres to one Wycliffe Wepukhulu to use, but that the objector and others had stopped Wepukhulu from using the land. The objector's case was that the Petitioner's entitlement in parcel 1047 was only 2.225 acres; that Wepukhulu was not an heir to the estate; and that the Petitioner was wasting the estate by disposing part of it to third parties. His argument was that an injunction cannot be issued against beneficiaries to the estate.

It is common ground that both the Petitioner and the objector are beneficiaries to the estate of the

deceased. The basis upon the Petitioner came to court was that this was an intestate claim. The court was ultimately going to be required to identify all the beneficiaries and ascertain their respective portions. At this stage, therefore, the court cannot say that the Petitioner is entitled to either 7 ½ acres or to 2.225 acres. If that is the case, an injunction cannot issue to protect the alleged 7 ½ acres. It is for that reason that the application is dismissed. The issue of costs shall await the confirmation of the grant.

Dated, signed and delivered at Bungoma this 20<sup>th</sup> day of September, 2012.

**A. O. MUCHELULE**  
**JUDGE**