



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 126 OF 2001**

**IN THE MATTER OF THE ESTATE OF -**

**SAMUEL ANYANGU NAMBAKA [DECEASED]**

**GILBERT CHEBUCHE ..... OBJECTOR/APPLICANT**

**VERSUS**

**ELON C. ANYANGU**

**JOEL L. ANYANGU**

**AYUB WAMBOLO..... ADMINISTRATORS/RESPONDENTS**

**R U L I N G**

The objector filed his summons for revocation of the grant dated 15<sup>th</sup> February 2007 seeking orders that the grant that was confirmed by the court on the 23<sup>rd</sup> of February 2005 be revoked on the grounds that the petitioners concealed from the court material facts and made false statements. Parties agreed to determine the application by way of oral evidence. The objector testified that his grandfather had two wives, namely- **EUNICE OTINGA** and **AWINJA**. Eunice had two sons namely – **ANDATI** and **AMBEYI**. Awinja had three children namely – **OBULEMBERE NAMBAKA**, **NELSON CHIVULE** and **SAMUEL ANYANGU NAMBAKA**.

It is the objector's evidence that his father went to work in Uganda and the petitioner's father by the name **ANYANGU NAMBAKA** registered the land meant for the objector's father in his name. When his father came from Uganda in 1982 he was invited home and was given plot number **145**. There was sugarcane on the plot that had been planted by the petitioner's father and the family agreed that upon maturity and clearance of the cane the plot was to be transferred to the objector's father. By bad luck the objector's father died before that was done. The objector filed a claim before the Ivokolo Land Disputes Tribunal in 1983 and he was given the land. The petitioners appealed to the Appeals Tribunal. It is the objector's evidence that the petitioner's father was the last born in the second home of his grandfather and he died in 1986. Although his father was buried on plot number 195, the objector was moved to plot number **145**. The other children of his grandfather were given their respective plots. He has been living on plot number **145** since 1983.

On their part the second petitioner, **JOEL LUKOYE ANYANGU** testified that the objector moved on to suit land in the year 2000 at night. They reported the matter to the area and the area district officer. After the decision of the Ivokolo Land Disputes Tribunal they filed an appeal and the Appeals Committee resolved that the land was theirs. The petitioner testified that the objector is his grandfather's

son from the first wife while his father was from the second house. **DW2, PETER EINDA** testified that he knew the late Samuel Anyangu who is the petitioner's father. Samuel Anyangu used to own oxen and a hoe and the witness used to operate them in 1953. According to DW2 he did not see the objector's father on the land.

From the pleadings herein it is clear that there are two separate plots of land namely- Plot number **MARAMA/SHIRO TSA/195** measuring 4.0 hectares and **MARAMA/SHIRO TSA/145** measuring 2.2 hectares. The grant that was confirmed was for plot number 195 whereby **ELON CHATENDE** was to get 5 acres, **JOEL LUKOYE ANYANGU** was to get 3 ½ acres and **AYUB WAMBOLO** was to get 1½ acres. Both plot numbers 145 and 195 were registered in the names of **ANYANGU NAMBAKA**, the petitioner's father. When the petitioners filed this cause they indicated that the deceased's estate was plot number **195** and never mentioned anything about plot number **145**.

The proceedings before the Butere Land Disputes Tribunal show that the objector's claim was for plot number **145** that was registered in the name of the petitioner's father. It is his evidence before this court and the before the Tribunal that his father was in Uganda when the petitioner's father got himself registered. Before the tribunal the objector's witness was **NELSON SHIKHULE** who was a brother to the petitioner's father. His evidence before the tribunal was that their father, **NAMBAKA**, had two wives namely **OTINGA NAMBAKA** and **EUNICE AWINJA NDUNDE**. Otinga had two sons – namely **WAMUBEYI** and **ANDATI**. Eunice Awinja had three sons namely – **OBULEMIRE**, **NELSON SHIKHULE** (the witness) and **ANYANGU** – the petitioner's father. He further testified that when land registration was done in 1964 **DANIEL ANDATI**, the objector's father, was in Uganda and plot number **145** was to be registered in his name. The land was registered in the names of **SAMUEL ANYANGU** the petitioner's father. When the objector's father came back from Uganda the family met and showed him a small place to put up a temporary house on the understanding that when the sugarcane was to be cleared from **MARAMA/SHIRO TSA/145** he would move to that parcel of land. It was his evidence that plot number **145** belonged to the objector's father.

From the pleadings herein and the evidence on record, I am satisfied that plot number **MARAMA/SHIRO TSA/145** was to be registered in the names of the objector's father. The petitioners did not include that parcel of land as part of their father's estate. I do find that although the land is registered in the names of **ANYANGU NAMBAKA** the same should be transferred to the objector. I will allow the petitioners to continue occupying plot number **MARAMA/SHIRO TSA/195**. Since the petitioners may not effect a transfer in favour of the objector in relation to plot number **145** I do revoke the grant issued to the petitioners and issue a fresh confirmed grant in the following terms:-

Plot number **MARAMA/SHIRO TSA/195** –  
**ELON CHATENDE ANYANGU** - 5 ACRES  
**JOEL LUKOYE ANYANGU** - 3½ ACRES  
**AYUB WAMBOLO** - 1½ ACRES

Plot number **MARAMA/SHIRO TSA/145** –  
**GILBERT CHEBUCHE ANDATI** - WHOLE

In the end I am satisfied that the objector's claim is merited and the same is allowed. A fresh grant shall be issued in the above terms and the objector shall effect the grant. The Land Registrar Kakamega is hereby directed to issue a title deed for plot number **MARAMA/SHIRO TSA/145** in favour of the objector. Each party shall meet his own costs.

**Delivered, dated and signed at Kakamega this 22<sup>nd</sup> day of November 2012**

**SAID J. CHITEMBWE**

**J U D G E**