REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 456 of 2009

IN THE MATTER OF THE ESTATE OF FRANCIS OMOLO MWAKHA- (DECEASED)

BETWEEN

THOMAS MWAKHA WOMOLO …….…. OBJECTOR/APPLICANT

VERSUS
IBRAHIM OKACHIA …….…..…….. PETITIONER/RESPONDENT

R U L I N G

The summons for revocation or annulment of grant herein dated 24.6.11 seeks orders that the grant of letters issued to the Petitioner herein on 21.2.10 be revoked or annulled and that a fresh grant be issued to the applicant.

The application is supported by the affidavit sworn by the applicant, THOMAS MWAKHA WOMOLO on 24.6.11.

It is contended in the said affidavit that the respondent had already benefited during the lifetime of the deceased as he had been given land parcel No. MARAMA/SHIRAHA/350 and is therefore not entitled to inherit L.P. MARAMA/SHIRAHA/1010 and MARAMA/ SHIRAHA/1011.

In opposition to the application, the respondent, IBRAHIM OKACHIA swore an affidavit in reply on 13.6.12. The said affidavit is rather lengthy and has gone into details some of which may not be relevant at this stage. The respondent has described himself as the first born son of the deceased. He has listed the survivors of the deceased as follows:-

- IBRAHIM OKACHIA
- SILVANO OMUSULA OMOLLO
- THOMAS MWAKHA WOMOLO
- MARGARET MBINJI

The respondent has averred that he was given L.P. No. MARAMA/SHIRAHA/350 by his grandfather as a gift. That the SALVATION ARMY CHURCH has constructed a semi-permanent church in the deceased's land and is therefore a liability in the estate of the deceased. It is the respondent's contention that the three sons of the deceased were disclosed when this succession cause was filed and the applicant even signed the form of guarantee by personal sureties and the affidavit of justification of proposed

sureties.

The respondent has accused the applicant of intermeddling with the estate of the deceased by selling a part thereof to one ABEDINEKO AMANGA.

The applicant did not file any further affidavit to controvert the issue of his having signed the guarantee by personal surety form and the affidavit of justification of proposed sureties. The applicant's names are represented on both documents. The applicant has also not denied that he has inter-meddled in the estate of the deceased.

The application before the court is however for revocation of the grant issued herein

The name of the applicant, THOMAS MWAKHA WOMOLO is reflected in the affidavit in support of the petition as one of the survivors of the deceased. The same applies to OMUSULA OMOLO SILVANO.

However, the respondent in his affidavit in reply has stated that the SALVATION ARMY CHURCH is a liability but is not reflected in the liabilities column.

The respondent also failed to disclose his sister, one MARGARET MBINJI whom he has named in his affidavit. Issues of who will get what share of the estate of the deceased would be settled at the confirmation stage.

All in all, having found that the respondent concealed some material facts to the court the grant is hereby revoked. A fresh grant to issue in the names of the Petitioner and the Objector. Costs in the cause.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

B. THURANIRA JADEN
J U D G E