

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 194 OF 2011

**IN THE MATTER OF THE ESTATE OF WANDO
SANDE.....DECEASED**

A N D

EDWARD OKANGA

SANDE.....APPLICANT

V E R S U S

GEORGE KENN

WANDO.....RESPONDENT

R U L I N G

Wando Sande, the deceased in these proceedings died on 26th October 1993. On 29th September 2010, George Kenn Wando (the respondent) petitioned the Butere Principal Magistrate's Court in Succession Cause No.86 of 2010 to be granted letters of administration in respect of the estate of the deceased. In the said petition, the respondent listed himself and Yunia Mary Sande as the sole beneficiaries of the estate of the deceased. The property to be inherited was stated to be a parcel of land known as Kisa/Ikomero/1472 (the suit property). The respondent listed one Richard Anzaya Sumba as a purchaser who is entitled to the suit property. After the publication of the notice in the Kenya Gazette, a grant of letters of administration intestate was issued to the respondent on 7th January 2011. On the same day, the respondent applied for the grant that was issued to him to be confirmed notwithstanding that six months had not expired. It is not clear from the pleadings filed in the subordinate court whether the application was allowed. What is apparent is that on 11th January 2011, the respondent registered himself as the proprietor of the suit property in his capacity as the administrator of the estate of the deceased. According to the official search of the suit property which was annexed to the affidavit of the respondent, Joseph Bulinga Keya filed a caution to the register of the title of the suit property claiming purchaser's interest. Richard Anzaya Sumba attempted to file Form RL 7 that would have enabled him to be registered as the owner of the suit property.

On 14th March 2011, the applicant filed summons pursuant to the provisions of **Section 76 of the Law of Succession Act** seeking orders of this court to revoke the grant that was issued to the respondent by Butere Principal Magistrate's Court. The applicant claimed that the respondent had obtained the said grant of letters of administration by fraudulently concealing the fact that the applicant was a beneficiary of the estate of the deceased. He further contended that the respondent had made false statements and representations with a view to concealing from the court the true state of affairs of the estate of the deceased. Finally, the applicant argued that the subordinate court lacked jurisdiction to issue the grant since the value of the estate of the deceased was more than KShs.100,000/=. The application is supported

by the annexed affidavit of the applicant who claimed that he was the brother of the deceased and therefore entitled to inherit the suit property. He gave a history of how the deceased had indicated the suit property should be inherited by the applicant and infact had wanted to transfer the same to him prior to his death in 1993. It was the applicant's case that the respondent had no claim whatsoever over the suit property. He urged the court to reach a finding in his favour.

In response to the application, the respondent filed notice of preliminary objection. He also filed a replying affidavit in opposition to the summons. In the preliminary objection, the respondent claimed that the court lacked jurisdiction to entertain the application because the sole purpose of instituting the proceedings was to legitimise a crime that was being perpetrated by the applicant. It was his case that the applicant had infact intermeddled with the estate of the deceased by purporting to sell the suit property to a third party before letters of administration in respect of the said estate had been issued. It is the respondent's case that his mother and himself were the only dependants of the estate of the deceased and therefore they were the only ones who are entitled to inherit the suit property. The respondent urged the court to reach a finding that the summons for revocation of grant had no legal basis and should therefore be dismissed with costs.

During the hearing of the summons, it is only Mr. Musiega for the respondent who attended court. This court allowed him to make his submissions in opposition to the summons after it established that the hearing date for the summons had been taken in court by consent of counsel for the parties herein. Mr. Musiega essentially reiterated the contents of the preliminary objection and the replying affidavit filed by the respondent. After carefully considering the facts of this case, the issue for determination by this court is whether the applicant made a case for this court to revoke the grant that was issued to the respondent by Butere Principal Magistrate's Court. It was clear from the pleadings filed that there is a dispute between the applicant and the respondent in regard to who is entitled to inherit the suit property. Whereas the respondent is the son of the deceased, the applicant is a brother to the deceased. There is evidence that the respondent and his mother relocated from the suit property to Bungoma sometime soon after the death of the deceased.

It was not clear from affidavit evidence who is the current occupant of the suit property. This is because two persons are claiming purchaser's interest in regard to the suit property. The two alleged purchasers were sold the suit property respectively by the applicant and the respondent. To establish who is actually entitled to inherit the suit property this court will require both parties to adduce viva voce evidence. This is because it appears that both the applicant and the respondent are intent on gaining financial advantage by selling the suit property. Neither of them is interested in occupying the suit property.

So that neither the applicant nor the respondent has undue advantage pending the hearing and determination of this succession dispute, the grant of letters of administration which was issued to the respondent by Butere Principal Magistrate's Court is hereby revoked. The registration of the respondent at the Lands registry as the proprietor of the suit property is hereby cancelled. A new grant shall be issued to both the applicant and the respondent. Either party shall be at liberty to take further directions from the court in regard to the manner in which the succession dispute shall be disposed off. There shall be no orders as to costs.

DATED AT KAKAMEGA THIS 23RD DAY OF JUNE 2011

L. KIMARU

J U D G E