

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 963 of 2007

IN THE MATTER OF THE ESTATE OF KHAEMBA WEINA BENJAMIN ::: DECEASED

A N D

GLADYS NANG'UNDA WEKESA PETITIONER

V E R S U S

JOHN WAFUBWA SICHANGI DEFENDANT

R U L I N G

Benjamin Khaemba Weima died on 19th June, 1990. John Wafubwa Sichangi, the respondent herein, filed Bungoma Succession Cause No.129 of 2002 and was issued with a grant. The grant was confirmed on 11th December, 2008. The petitioner herein, Gladys Nangunda Wekesa filed the current Succession Cause at Kakamega and was issued with a grant for the same estate on 19th June, 2008. The petitioner filed her application for confirmation of grant on 15th July, 2008.

On 1st April, 2009 the petitioner filed an application for injunction seeking restraining orders against the respondent from interfering with plot No. N.KABRAS/KILIBOTI/631. The respondent informed the court that he had already obtained letters of administration through the Bungoma High Court.

The petitioner herein contends that the respondent is not his brother or the deceased's son. She would like to have the respondent restrained from dealing with the deceased's estate. She called one witness Rispa Makungu who testified that the respondent is not the son of Benjamin Khaemba, the deceased. The petitioner is one of the deceased's daughters.

On the other hand the respondent states that he is the deceased's son. He called three witnesses who testified that the respondent is the first born of the deceased. DW1 Osborn Muyuka Litatia testified that the respondent's mother left the deceased and took the respondent with her. In 1963 the deceased brought back the respondent to his homestead. DW2, Nelson Barasa Mwoboli testified that the deceased had five children. The two parties herein and three other daughters namely Lenah, Nabututu and Nyongesa. DW2's mother is a sister to the deceased and knows the deceased's family.

Dw3, Lena Nasumba is the deceased's eldest daughter. She informed the court that the respondent is her brother and that the respondent's mother was called Waliaka. She left the deceased who used to work with the Railways while pregnant. Naliaka's family returned the cows that had been used as dowry and the same cows were used as dowry for DW3's mother who is also the petitioner's mother. The witness further testified that the respondent was brought back by the deceased in 1963 while the petitioner was very young. The respondent is the one who took the cows meant for the petitioner's dowry to the petitioner's in-laws and even conducted circumcision for the petitioner's children.

From the evidence adduced herein, I am satisfied that the respondent is the deceased's dependant. Although I had noted from the death certificate and the respondent's identity card that it could not be possible for the respondent to be the deceased's son given his age, I do find that the evidence adduced herein has established that the respondent is the deceased's

son and is entitled to inherit.

Since there cannot be two grants for the same estate, I do order that the grant issued to the petitioner Gladys Wang'unda Wekesa be cancelled and the file closed. The grant issued to the respondent by the Bungoma Court shall continue to operate and the Deputy Registrar is hereby instructed to return the file to Bungoma with a copy of this ruling. The applications for confirmation of grant and injunction filed in this cause are hereby dismissed. There shall be no order as to costs.

SAID J. CHITEMBWE

J U D G E

Delivered, dated and counter-signed by the Hon. Justice Isaac Lenaola at Kakamega this 15th .day of
April, 2010

ISAAC LENAOLA

J U D G E