



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 601 of 2007

IN THE MATTER OF THE ESTATE OF NELSON OPANDA INDIMULI DECEASED

A N D

NAFTAL SAKWA OPANDA PETITIONER

V E R S U S

NICHOLAS JOSEPHAT OPANDA OBJECTOR

R U L I N G

The Objector filed his application for revocation of the grant on 10th February, 2009. The application is supported by the Objector's affidavit sworn on the same date. The Objector contends in his supporting affidavit that the petitioner filed the Succession Cause without proper and detailed consultation among all the beneficiaries.

The petitioner testified that the deceased died on 21st December, 1997. He owned two plots namely Butsotso/Esumeyia/81 and 84. Before his death, the deceased who was his father had shown all his sons their respective portion on both plots and each one knows his boundary. The family met at his house and resolved that he was to keep the death certificate. He later realized that a Succession Cause had been filed without his knowledge. He would like the estate to be distributed as per his deceased father's proposal. He denied that he wanted to get a share of his deceased brother.

The petitioner filed the application for confirmation of grant on 24th November, 2009. He has indicated how he intends to have the estate distribute. The petitioner testified that all the beneficiaries are in agreement on the proposed distribution. The objector created problems when he realized that his late brother's daughter who is now adult was to inherit. The objector refused to release the death certificate and the petitioner applied for another one. The objector is the 4th born and the other older beneficiaries are in agreement. A surveyor went to the estate and the objector's portion was surveyed and measures 0.95 Hectares.

From the petition the deceased, NELSON OPANDA INDIMULI, died on 21st December, 1997. He had two plots namely No. **BUTSOTSO/ESUMEYIA/81** measuring 19 acres and No. **BUTSOTSO/ESUMEYIA/84** measuring 8.0 Hectares. During the hearing of the objection proceedings the following beneficiaries were present in court.

1. Elimina Opanda
2. Isaya Opanda
3. Manaseh Opanda
4. Rose Mulanda Opanda
5. Everlyne Nyanule
6. George Akungwi
7. Philis Shapuka
8. Patrick A. Opanda
9. Ernest Lubisia

10. Joseph Okata Opanda
11. David Makuba Opanda
12. Joseph Indimuli
13. Nicholas Josephat

The objector did not provide any mode of distribution. His only contention is that he was to keep the death certificate and was not consulted. All the other beneficiaries are agreeable to the mode of distribution contained in the application for confirmation of grant dated 24th November, 2009.

According to the petitioner's proposed distribution, each of the beneficiary's share has been ascertain. The objector is supposed to get **0.95** Hectares from plot **BUTSOTSO/ESUMEYIA/84**. The objector did not contend that his proposed share is smaller than what he has on the ground. I do find the proposed distribution by the petitioner to be fair and the same shall be adopted by this court.

The objection filed on 10th February, 2009 is hereby dismissed. The application for confirmation if grant dated 24th November, 2009 is granted as proposed. The grant issued on 6th June, 2008 is hereby confirmed. Each party shall meet his own 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