



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 475 of 1999

IN THE MATTER OF THE ESTATE OF ANYOLO MUNYWERE NYENDE ::::::::::: DECEASED
A N D
ROBERT AMUKMBWA ANDIKA ::::::::::: PETITIONER/RESPONDENT
V E R S U S
BENINA JAMES MACHENGO ::::::::::: OBJECTOR/APPLICANT
R U L I N G

1. The deceased in this cause, Anyolo Munywere Nyende died on 8th August, 1981 and one Florence Tsisiche by a Petition filed on 7th September, 1999 applied for letters of administration to his estate claiming to be his “daughter”. Apparently she died before a grant of letters of administration was made to her and one Robert Andika sought to be substituted in her place and he claimed to be the “only son” of Florence aforesaid.
2. On 1st August 2000, Andika became the Petitioner in place of Florence by an order of this court and on 20th September 2000, a grant of letters of administration was made out to him.
3. On 15th February 2006, one Benina James Machengo sought to have the grant aforesaid revoked under section 76 of the Law of Succession Act for reasons inter-alia that Andika and Florence were neither beneficiaries nor were they directly related to the deceased. That the latter’s sole intention in filing the present Cause was to disinherit the deceased’s real and lawful heirs.
4. Apparently, Andika actually had obtained a certificate of confirmation of grant and had the deceased’s sole asset i.e. land parcel No. Butso/so/Bukura/250 registered in his name by the time the application to revoke the grant was filed and his response to it was as follows:-
5. Firstly, that the deceased, Anyolo held the above parcel of land in trust for himself and his two brothers, Jacob Amunga and James Ochieng. That Florence aforesaid was the only daughter of Jacob Amunga and was entitled to her father’s portion of the land. Further that he, Andika, was “a dependant” of Florence Tsisika and was entitled to a share of the estate.
6. Secondly, that Benina, the applicant was originally married to the deceased, Anyolo, but upon his death, she married one James Ochieng and thereafter lost her claim to the estate.
7. At the hearing, only Benina the applicant and her witness, Charles Mache Munwele testified and they stated that Andika was a stranger and a son of one Wefende who had leased the deceased’s land for 3 years

and he had no blood relationship with the deceased or even Florence. That although Benina married James Ochieng, brother of the deceased, this was after the deceased had died and that she remained on the deceased's land.

8. To my mind, the matter presents no difficulty at all, because Andika and Florence in proceedings prior to the present application styled themselves "son" and "daughter" of the deceased. Later, after Florence had died, Andika claimed to be her "only son" and later again, he claimed to be "her dependant". He lied in all instances because by the evidence of Beninah and Munywele which is uncontested, infact he had no relationship with the deceased whatsoever. His attempt at claiming the deceased's land using Florence has been exposed to be a ploy to disinherit Beninah and her sons and he admits that the latter indeed were sons of the deceased but who were never disclosed in the petition by Florence nor in the subsequent solo proceedings by Andika leading to the deceased's parcels of land being registered in his sole name.

9. Reading section 66 of the Law of Succession Act, part V of the same Act and section 76 thereof, this is a case for the grant issued on 20th September 2000 to be recalled and revoked.

10. The above being my order, it follows that the registration of Robert Amukambwa Andika on 16th November 2000 as proprietor of title No. Butso/Butsotso/Bukura/250 is hereby ordered to be nullified and revoked and the title should revert back to the names of Anyolo Munywere Nyende (deceased) until further orders of this court.

11. The application dated 15th February 2006 is determined in the terms above.

Costs will be in the cause.

Orders accordingly.

Delivered, dated and signed at Kakamega this 15th day of April, 2010

ISAAC LENAOLA

J U D G E