



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA  
SUCCESSION CAUSE NO. 300 OF 2004**

**IN THE MATTER OF THE ESTATE OF THE LATE *LEO MAKOKHA KASIANO* – DECEASED  
BETWEEN**

**ALI KHATA WAMUKOYA -----PETITIONER/RESPONDENT**

**VERSUS**

**SULEIMAN SHIUNDU WASWA -----1<sup>ST</sup> OBJECTOR/APPLICANT**

**PETER ANYANGU LEO -----2<sup>ND</sup> OBJECTOR/ APPLICANT**

**RULING ON DISTRIBUTION**

- 1. Leo Makokha Kasiano** died on 30.11.1997 and in the Petition filed on 1.7.2004, the Petitioner, **Ali Khata Wamukoya** indicated that the persons who survived him were;

  - i) ***Mwanahawa Ayela Wamukoya***
  - ii) ***Ali Khata Wamukoya***
  - iii) ***Peter Anyangu Leo***
  - iv) ***Juma Omukongolo Wamukoya***
  - v) ***Dickson Shihundu Osundwa***
  - vi) ***Suleiman Shiundu Waswa***
- 2.** The only asset listed was land parcel Number **North Wanga/Koyonzo/1279** measuring 3.36 hectares or thereabouts. The certificate of official search dated 9.1.2004 indicates that the proprietor was **Makokha s/o Kasiano** and that he was registered as such on 29.6.1981 and that on the same day, a caution was placed against the title in favour of Wamukoya Mumali who was claiming a purchaser's interest.
- 3.** On 2.7.2007, a grant of letters of administration was made to Ali Khata Wamukoya and on 10.8.2007, he sought to confirm the grant. On 9.3.2009 and before confirmation aforesaid, Peter Anyangu Leo sought to have the grant revoked for reasons that Ali Khata Wamukoya was only but a son of the alleged purchaser of title No. 1279 and that the only true survivor of the deceased was Peter Anyangu Leo and no other. That he had no knowledge of the Petition which was in any event filed fraudulently and without his knowledge.
- 4.** Prior to that Application, another Summons for revocation was filed by one Suleiman Shiundu Waswa who claimed that whereas Leo Makokha Kasiano had sold the whole of land parcel No. 1279 to Mwanahawa Wamukoya, the latter had sold 2.5 acres to be excised therefrom, to him. That Mwanahawa had no children and she requested her nephew, Ali Wamukoya to ensure that Suleiman Shiundu Waswa got his 2.5 acres of land. That he and Ali Wamukoya then filed the present Succession Cause and Shiundu was named as a beneficiary of part of the land. That when the Summons for Confirmation was filed, he was not listed as a beneficiary hence his application to have the grant revoked.
- 5.** In a Replying Affidavit sworn on 14.12.2009, Ali Wamukoya admitted that Mwanahawa had sold part of title No.1279 to Shiundu but that in fact, only 2.0 acres were to be transferred to the latter and not 2.5 acres as alleged.
- 6.** That he had not refused to have the grant confirmed but that he was incarcerated at Kakamega G. K. Prison where he was being held on robbery with violence charges. That the Application to revoke the grant is therefore without merit and should be dismissed.
- 7.** In another Affidavit sworn on 23.6.2010, Peter Anyangu Leo deponed that he was aware that his

father, the deceased in this case, had sold two acres of land to Ali Khata Wamukoya and that all other persons named as beneficiaries were strangers and their claims unknown.

8. On 15.3.2010 parties recorded a Consent Order in which Shiundu was admitted as a beneficiary to the estate and parties agreed to file further Affidavits on distribution.

9. Ali Khata Wamukoya by his Affidavit sworn on 5.7.2010 proposes that title No.1279 should be shared out as follows;

1. *Peter Anyangu Leo* - 1 Acre
2. *Suleiman Shiundu Waswa* - 2 Acres
3. *Ali Khata Wamukoya* - 6 Acres
4. *Dickson Shiundu Osundwa* - 1 Acre

10. I have no proposal from Peter Anyangu Leo or Suleiman Shiundu Waswa who were both represented by advocates and who were aware of the order to file Affidavits on distribution.

11. In spite of the fact that I may have had something to say about certain conflicting issues which are apparent from what I have stated above, I see no basis for denying the proposal by Ali Khata Wamukoya which is in any event uncontested. I will therefore order distribution as follows; Title No. North Wanga/Koyonzo/1279 should be shared out to;

1. *Peter Anyangu Leo* - 1 Acre
2. *Suleiman Shiundu Waswa* - 2 Acres
3. *Ali Khata Wamukoya* - 6 Acres
4. *Dickson Shiundu Osundwa* - 1 Acre

12. The Application for confirmation of grant dated 10.8.2007 is therefore allowed in the above terms.

13. Let each party bear its own costs.

14. Orders accordingly.

*Delivered, Dated and Signed at Kakamega this 30<sup>th</sup> day of September, 2010.*

**ISAAC LENAOLA**  
**J U D G E**