



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

PROBATE & ADMINISTRATION 273 OF 2006

IN THE MATTER OF THE ESTATE OF NDOLA NG'OLO MWENZWA (DECEASED)

PETER MUTUA NDOLA PETITIONER/ APPLICANT

VERSUS

NTHAMBI MUANGE NGOLO..... 1ST RESPONDENT/OBJECTOR

PHILES MBATHA WAMBUA 2ND RESPONDENT/OBJECTOR

NDUUTI MUTUA NGOLO 3RD RESPONDENT/OBJECTOR

SYOKAI KINYAATI NGOLO 4TH RESPONDENT/OBJECTOR

ALPHONCE MUTUKU MAITHA 5TH RESPONDENT/OBJECTOR

RULING

1. The deceased herein, Ndola Ng'olo Mwenzwa died on 08/12/1994. He left behind his 2nd wife, Muthoki Ndola, son, Peter Mutua Ndola, daughters-in-law, Mary Muthee Nziu and Wangene Matheka Ndola, grandson Wilson Muthama Ndola and eight daughters, Rael, Kaluki, Kasiva, Rose, Kithanze, Katile, Nzilani, Wayua and Beth, (all married and living away from his home). The deceased also left seven pieces of land at Mitaboni/Mutituni being parcels Nos.1153, 1545, 1952, 1727, 1703, 1297 and 2389.
2. Peter Mutua Ndola applied for letters of administration to the deceased's estate on 27/6/2006 and before the letters could be issued, Nthambi Muange Ngolo, Philes Mbatha Wambua, Nduuti Mutua Ngolo, Syowai Kinyaati Ngolo and Alphonse Mutuku Maitha filed an objection thereto and stated inter-alia that;
 - i. they are widows of the deceased's brothers and have equal rights to the estate and specifically to titles nos. 1703 and 1727 which were ancestral lands.
 - ii. that the issue was being dealt with by an unnamed District Commissioner in Cases "**nos. 147 and 39/2006**".
3. The response by Peter Ndola to the above claims was that the objectors had their own ancestral lands elsewhere and were only interested in disinheriting him as he was the deceased's sole surviving son and that the claims had in any event been dismissed by the District Land Registrar, Machakos in 1986 while the deceased was still alive and the ownership by the deceased over the two plots was affirmed.
4. At this point I am only supposed to determine whether the objection has merit or not. As I understand an objection within the meaning of the Law of Succession Act, it should be raised to challenge the Petitioner's right to be granted temporary letters of administration. That is the import of Rule 17 of the Probate and Administration Rules. In the present case, the objectors seem to have misunderstood the issues to be raised at this stage. Theirs is more of a Protest than an objection. They do not dispute the fact that Peter Mutua Ndola is entitled to apply for letters of administration and that their claim is limited to a share of title No. 796 aforesaid.
5. In the event, the best orders to make would be to dismiss the objection and further order as follows:-
 - i. Let temporary letters of administration be issued to Peter Mutua Ndola forthwith. He should apply for confirmation thereof within 60 days and serve the Application on the present objectors and directions will thereafter be given.
 - ii. Costs of the objection shall be in the cause.
6. Orders accordingly.

Dated and delivered at Machakos this **30th** day of **July** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Applicant**

ISAAC LENAOLA

JUDGE