



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Succession Cause 588 of 1999**

**PHILI MUKHWANA ETEMESI**

**ROSEBELLA AYIELA ..... PETITIONERS**

**V E R S U S**

**ROSE OLWANGU MUKHWANA**

**RUFAS ETEMESI MUKHWANA ..... APPLICANTS/OBJECTORS**

**R U L I N G**

The two petitioners were issued with a grant of letters of Administration Intestate on 1<sup>st</sup> March, 2000. The grant has not been confirmed and no application for confirmation of the grant has been filed in court.

The objectors filed their summons for revocation or annulment of Grant on 20<sup>th</sup> September, 2004 together with their supporting affidavit. They filed a further affidavit on 21<sup>st</sup> July, 2009 while the petitioners filed their replying affidavit on 18<sup>th</sup> June, 2009.

The objectors' contention is that the late **RUFAS ETEMESI ESHIKUMO** was survived by three sons namely **PHILIP MUKHWAMBO ETEMESI, HEZRON MUKHWANA ETEMESI** and **ONZARE SHIKUMU ETEMESI**.

The first Objectors are the wife and son of the late **HEZRON MUKHWANA ETEMESI**. Their objection is that the petitioners did not include them in the Succession Cause and that the estate of **Rufas Etemesi Eshikumo** included plot Number

**BUTSOTSO/BUKURA/431** measuring 7.5 acres and that the deceased had sub-divided the land and shared it amongst his three sons. The petitioners have transferred the land into their names without giving the objectors their share

When the petitioners filed this petition, they listed the following as the survivors –

*Philip Mukhwambo Etemesi – son*

*Rosebellah Ayiela – daughter –in-law*

*Eshikumo Mukhwana – grandson*

*Rufas Etemesi - grandson*

In the replying affidavit sworn on 18<sup>th</sup> June, 2009, the Petitioners do not object to the objectors claim that they are entitled to inherit the deceased. I believe survivors indicated in the affidavit in support of the petition for letters of Administration named as Rufas Etemesi is the 2<sup>nd</sup> Objector herein. Paragraph 9 of the said affidavit states that the petitioner will make an application for confirmation of the grant and will set out the way the estate shall be distributed.

The objectors contend that the petitioners have registered themselves as the proprietors of Plot No. **BUTSOTSO/BUKURA/431**. No document has been annexed to establish this allegation. However, if that contention is correct, then the petitioner did not follow the correct procedure as the share for each beneficiary has not been identified for distribution.

I do order that the petitioners file their application for confirmation of Grant within 30 days hereof and the said application should be serve upon the objectors. Should there be any objection to the mode of distribution proposed by the petitioners, then the objectors shall file their affidavit stating how they propose to distribute the estate. In the meantime the petitioners are hereby restrained from transferring plot No. BUTSOTSO/BUKURA/431 to anybody pending the confirmation of the grant. Each party shall meet its own costs.

*Delivered, dated and signed at Kakamega this 27<sup>th</sup> day of October, 2009*

**SAID J. CHITEMBWE**  
**J U D G E**