

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 548 of 2004

IN THE MATTER OF THE ESTATE OF RICHARD ESNDI CHAGADWA (DECEASED)

A N D

HUDSON ESENDI KIVUNAGA.....PETITIONER

A N D

TIMOTHY ASILIGWA ESENDI

HERMAN LOVEGA ESENDI.....OBJECTORS

R U L I N G

The deceased in this cause was Richard Essendi Chagadwa who died on 9th November, 1997 leaving land title No. Kakamega/Kedoli/90. He was a polygamist with three wives, Belida Inziani Esendi, deceased, Rosa Musuluve Esendi, deceased, and Esther Alivitsa Esendi who survived him and is still alive. The deceased was also survived by several sons. One of them Hudson Esendi Kivunaga, (petitioner), filed the petition in this cause on 28.10.2004 seeking a Grant of Letter of Administration intestate. The petition was gazetted on 24-12-04 under Gazette Notice No.10247. The Grant of Letters of Administration has not yet been issued.

On 26.1.05, Timothy A. Esndi and Herman L. Esendi (objectors) the other sons of the deceased filed objection to the making of the Grant sought by Hudson Esendi Kivunaga.

On 3.10.2006 the said objectors filed an application seeking an order for the petitioner to be restrained from “further interference in the suit property”. The application came up for hearing on 18.10.06. They (objectors) had earlier filed an application dated 16.5.2006 seeking an order to stop the petitioner from intermeddling with the estate of the deceased and causing wanton acts of destruction to the estate of the deceased. That application is scheduled to be heard on 11.12.2006.

When the application dated 3.10.06 came up for hearing on 18.10.2006, Mr. Obudho, learned counsel for the objectors, urged the court to grant the injunction order against the petitioner to stop further acts of wanton destruction of the estate. The application was supported by the affidavit of Timothy Asirigwa Esendi, one of the two objectors, which I have read. I have also perused the replying affidavit of the petitioner and duly considered the submissions made by Mr. Obudho, learned counsel for the objectors and Mr. Musiega, learned counsel for the petitioner. I have observed that the objectors are brothers from one of the three wives and the petitioner is an only son in one of the three houses. The issues raised by

the objectors on the one hand and by the petitioner on the other can only be determined following hearing where the parties are cross-examined and the court has the benefit of ascertaining the truth. The petitioner and the objectors are all beneficiaries and are entitled to be on the land of their late father. While the order sought to restrain a party from “interference of the suit property” is liable to different interpretations, it cannot resolve the on going wrangles and feuds. It is desirable that each heir continues to have access and use the land of the deceased in the manner obtaining as at the time of death of the deceased until the estate is distributed. The petitioner has no superior claim to that of the objectors over the estate of their deceased father. After due consideration of the application, I order that –

- (a) *the status quo obtaining at the time of death of the deceased shall be maintained and parties shall continue to use without hindrance their respective portions of the land.*
- (b) *the petitioner and the objectors shall maintain peace and refrain from any acts of destruction of the trees, houses and other structures or crops on the land.*
- (c) *The petitioner shall not hinder or prevent any of the objectors or any of the beneficiaries from using their respective portions of the land.*
- (d) *The parties shall move with speed to get the cause heard and the estate distributed.*

Delivered, dated and signed at Kakamega this 29th day of November, 2006

G. B. M. KARIUKI

J U D G E