



REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL MISC 132 OF 2003

IN THE MATTER OF THE ESTATE OF NAFTALI WANYAMA
RODGERS SIMON WANYAMA:.....:PETITIONER/RESPONDENT
VS
RUTH NEKESA WAMANI)
MARY NAMBUDIA MAKOKHA):.....: OBJECTORS /APPLICANTS

RULING

By an application by way of Revocation or Annulment of grant under section 76 of the Succession Act and Rule 44(1) of the Probate and Administration Rules, the applicants sought orders that letters of administration issued to Rodgers Simon Wanyama be revoked on the grounds *inter-alia*:

- 1. That the petitioner omitted to include the applicants yet they are daughters of the deceased Naftali Wanyama.**
- 2. That the petitioner did not seek and obtain consent of the beneficiaries of the estate.**
- 3. That the petitioner obtained, the grant by concealment of material facts.**

In exercise of my inherent powers under the Succession Act I decided to hear all parties on oath.

Ruth Nekesa Wanyama (PW1), testimony is that she is one of the daughters of the late Naftali Wanyama the registered owner of land parcel NO. BUKHAYO/BUYOFU/586. That the petitioner, Rodgers Simon Wanyama is her brother. That their claim ranks in same priority with that of the petitioner yet the petitioner failed to include her and her sister (PW2) as beneficiaries. That the petitioner therefore obtained the grant by concealment of material facts.

Mary Nambudia Makokha (PW2) testimony is that she is also one of the daughters of Naftali Wanyama, the registered owner of land parcel BUKHAYO/BUYOFU/586.

That the petitioner filed the application for confirmation of grant of administration without including her name and that of her sister Ruth Nekesa Wanyama (P.W1). That the grant was accordingly obtained by concealment of material facts. That subsequently the issue was raised before the area chief, Godfrey Elfes Kokonya (DW2) and the D.O. Nambale in 2003. That it was agreed between the parties that the subject parcel be subdivided and the objectors (DW1 and PW2) be given five (5) acres to be shared

equally amongst themselves. That the petitioner/respondent, Rodgers Simon Wanyama be left with 16 acres.

Rodgers Simon Wanyama (DW1) conceded that the applicants are his sisters. That they complained to the area chief (DW2) and the D.O. Nambale culminating into an agreement exhibit 1. The substance of the said agreement was that the petitioners be given 5 acres of the subject land and the remaining 16 acres to be given to the petitioner/respondent. That he had no problem with effecting/implementing the agreement.

Godfrey Elfes Kokonya (DW2), the Senior chief of Bukhaya East Location confirmed that the petitioners/respondents and the objector/applicants are surviving children of the late Naftali Wanyama.

That in October 2003, the petitioners complained of having been left out in the succession proceedings relating to the estate of their late father. Arising from that complaint, he referred the matter to the DO Nambale for arbitration. It culminated into an agreement to the effect that the two objectors be awarded 5 acres of L.R.BUKHAYO/BUYOFU/586 to be shared amongst them equally. That the remaining 16 acres of BUKHAYO/BUYOFU/586 was awarded to Rodgers Simon Wanyama.

Subsequently, the issue arose as to the implementation. He organized for the surveyor to subdivide the land in conformity with the agreement but Rodgers Simon Wanyama (DW1) was only ready to part with 4 ½ acres. By reason of the impasse the matter came to court.

I have analysed the evidence as best as I can. I am alive to the law that section 66 of the Law of succession Act lists in a hierarchical order the persons to whom grant of representation in intestacy can be made to. The surviving spouse has priority in applying for and being granted letters of administration. Ranking second in priority are the surviving children which in this case are Ruth Nekesa Wanyama (PW1), Mary Nambudia Makokha (PW2) and Rodgers Simon Wanyama (DW1).

From the agreement, exhibit 1, it is clear to me that on the one hand the two objectors were awarded 5 acres from L.R.BUKHAYO/BUYOFU/586 to be shared equally amongst themselves. The respondent, on the other hand, was awarded 16 acres of L.R.BUKHAYO/BUYOFU/586. Both parties, on the evidence, have agreed to abide by the terms of the agreement aforesaid. Accordingly, I revoke the grant issued on the 6th day of June 2005. I order that the petitioner/respondent and the objectors do file an application for issuance of letters of administration in the joint names of Rodgers Simon Wanyama, Ruth Nekesa and Mary Nambudia Makokha. Upon obtaining the letters of administration as aforesaid, the parties with the assistance of Godfrey Elfes Kokonya, the Senior Chief of Bukhaya/East Location, do put in motion the process of distribution of the estate which shall incorporate the terms of the agreement, exhibit 1. herein. The petitioner/respondent (Rodgers Simon Wanyama) shall also meet the costs of transfer personally to facilitate the smooth completion of the exercise.

Those, to me, are the orders I am capable of making in this application.

DATED and DELIVERED at Busia this 22nd day of December 2006.

N.R.O. OMBIJA

JUDGE

Mr. Ashioya for all parties.