



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO.422 OF 2002**

**IN THE MATTER OF THE ESTATE OF CHILALI MULINDA – DECEASED**

**AND**

**AINEA MAKOKHA WERUNGA.....PETITIONER/RESPONDENT**

**V E R S U S**

**SAYA CHILALI.....OBJECTOR/APPLICANT**

**R U L I N G**

The Objector/Applicant, Saya Chilali, in his application dated 27.5.2004 for orders for revocation or annulment of the Grant of Letters of Administration made to **AINEA MAKOKHA WERUNGA** on 17<sup>th</sup> July, 1993 in the estate of the late **CHILALI MULUNDA**. The Applicant avers in his affidavit in support of the application that he is the son of the late Chilali Mulunda and the Petitioner/Respondent, Ainea Makokha Werunga is a cousin of his late father. He contends that he is entitled to take out the Letters of Administration and to administer the estate of his late father. He contended that the Respondent is not entitled to inherit the estate of his Applicant's father. The Applicant denied the Respondent's allegations that he was involved in an attempt to sell parcels of land that constitute part of the estate and submitted that the deceased's sons were two, himself and Wafula Chilali.

On his part, the Respondent in opposing the application firstly conceded that the deceased was survived by the applicant and Wafula Chilali both of whom were his sons but contended that the said sons did not apply for the Grant of Letters of Administration after the death of their father on 17<sup>th</sup> July, 1973, instead, the Respondent submitted that the sons sold the lands constituting the estate of their late father and became landless. He contended that the Grant was confirmed on 26.5.03 but no proceedings have been taken since. Ainea Makokha Werunga, the Respondent succeeded to the title of the land of the deceased being land title No. KAKAMEGA/SURUNGA/583.

I have perused the application and the supporting affidavit sworn by the applicant. I have also perused the replying affidavit sworn on 27.7.2004 by the Respondent/Petitioner. I have given due consideration to the submissions of Mr. Mukavale learned counsel for the Applicant and Mr. Wekulo, learned counsel for the Respondent. I observe that there was delay on the part of the Applicant in applying for revocation of the Grant of the Letters of Administration in this cause and the precise dates when he became aware that the Respondent had applied for the Letters of Administration and for confirmation of same are not spelt out in the application. However, the estate of the deceased is still in the hands of the Respondent in whose name the land in question is registered. The Respondent is not a lined descendant of the deceased. Instead, the Applicant and Wafula Chilali are the two sons of the deceased. The Respondent is not entitled to inherit the estate of the father of the applicant. It is the Applicant and his said brother who are the lawful heirs. Notwithstanding the delay by the Applicant in bringing the application, it is plainly wrong for the Respondent to succeed to the estate of the deceased when the latter's sons are alive and are desirous of taking their inheritance and administering the estate.

Accordingly I revoke and annul the Grant and Confirmed Grants made on 18.11.2002 and 26.5.2003 respectively.

I order that a fresh grant of Letters of Administration shall issue in the joint names of Saya Chilali and

Ainea Makokha Werunga. I also direct that the registration of Ainea Makokha Werunga in the register of Lands at Kakamega as the proprietor and heir of the deceased in respect of land title No. Kakamega/Surungai/583 shall be cancelled forthwith and the name of the deceased restored until the cause is determined.

Dated at Kakamega this 13<sup>th</sup> day of May 2005.

G. B. M. KARIUKI

J U D G E