



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

SUCCESSION CAUSE NO. 466 OF 2009

IN THE MATTER OF THE ESTATE OF SIMEON WANYONYI KHWATENGE

KENNEDY WANYONYI.....PETITIONER

VERSUS

JOSEPH WANAMBUKO.....1ST OBJECTOR

JACOB MWIMA.....2ND OBJECTOR

DISHON WANYONYI.....3RD OBJECTOR

RULING

While preparing to write this ruling and upon perusing the file, the court finds the following;

- 1. That the deceased Simeon Wanyonyi died on 31/5/2008.***
- 2. That the deceased had 2 wives Mary Nafula and Judith Wakosa and their respective children.***
- 3. That the deceased was the registered owner of land parcel No. Kakamega/Moi's Bridge/82 measuring 11.4 ha.***
- 4. That he was issued with the title deed on 10/8/2007.***
- 5. On 4/2/2008 the title deed was closed for sub-division and new numbers 996-998 issued.***
- 6. That the title deed for Kakamega/Moi's Bridge/82 was closed when the deceased was alive, a month before he died on 31/5/2008.***
- 7. That land parcel Kakamega/Moi's Bridge/82 does not therefore exist having been closed for sub division on 4/2/2008 while this cause was filed on 17/12/2009 and it cannot therefore be for the purpose of distributing non-existent property.***

It is alleged by the petitioner by the petitioner that the deceased was the owner of Bungoma/Soysambu/6 measuring 8.3 ha. A copy of the green card produced shows the following transactions;

30/7/96: JOSEPH W. MALABA-TRANSFER.

30/7/96: TITLE DEED ISSUED.

This means therefore that the deceased was not was not at the time of death on 31/5/2008, the registered owner of the parcel of land.

From the above observations, the parties need to clarify the issue in this petition and which the court ought to adjudicate on.

As presented in this petition, the court has no power to distribute unless it is shown it belongs to the deceased. If the issue is that the deceased had commenced the distribution when alive but the process had not been completed before he died, the parties should make that clear and file

the appropriate application. As such the instant application is dismissed.

Each party to bear own costs.

It is so ordered.

DATED AT BUNGOMA THIS 16TH DAY OF NOVEMBER, 2021.

S. N. RIECHI

JUDGE