



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO. 430 OF 2012**

**IN THE MATTER OF THE ESTATE OF:**

**PETER MAKHOHA BULUMA.....DECEASED**

**BETWEEN**

**MOSES JUMA ODUORI**

**PATRICK SANYA OJIAMBO**

**JAMES WANDERA OKUMU..... **PROTESTORS****

**AND**

**FREDRICK RUMA MAKHOHA.....PETITIONER**

**RULING**

1. Before the grant herein was confirmed, the protestors herein filed an affidavit of protest dated 24<sup>th</sup> April 2018. They are claiming to have been left out as beneficiaries. Their protest is premised on the following grounds:

- a) That one Tadeo Ouma Okumu had purchased a portion of land from Peter Makhoha Buluma, the deceased herein.
- b) That the said Peter Makhoha Buluma died before effecting the transfer to the said Tadeo Ouma Okumu.
- c) That they purchased portions of the same land from Tadeo Ouma Okumu, who also died before he could pursue his right with the estate of the deceased herein.
- d) That the petitioner excluded them from the list of beneficiaries herein.

2. The application was opposed on the following grounds:

- a) That at the time of the agreement the petitioner was too young to know what was going on.
- b) That the protestors are encroaching on the land forming the estate of the deceased.

3. After hearing the protestors and the petitioner, the following facts have emerged:

- (i) That the land which the protestors occupy has and is recognized by the protestor as belonging to Tadeo Ouma Okumu. He only realized upon conducting a search that the land occupied by Tadeo Ouma Okumu fell in the estate of the deceased.
- (ii) There are documents that support the contention by the protestors that Tadeo Ouma Okumu purchased land from Peter Makhoha Buluma, the deceased herein.
- (iii) There is evidence that support the contention that the protestors purchased some land from Tadeo Ouma Okumu.

4. I am therefore satisfied that the protestors have a genuine claim from the estate of the deceased since the transfer to Tadeo Ouma Okumu

had not been effected. The petitioner is therefore ordered to file another confirmation of grant within 30 days which addresses the interests of the protestors. Failure to do so, the protestors will be at liberty to move the court.

5. Each party will meet own costs.

**DELIVERED and SIGNED at BUSIA this 4<sup>th</sup> day of February, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**