



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 85 OF 2005

IN THE MATTER OF THE ESTATE OF:

MBIYA WERE.....DECEASED

BETWEEN

MILTON OUNDO MBIYA.....PETITIONER/ APPLICANT

AND

OCHIENG OPONDO NYONGESAOBJECTOR/RESPONDENT

RULING

1. Milton Oundo Mbiya, the applicant herein moved the court by way of chamber summons dated 22nd June, 2020 under sections 47 of the Law of Succession Act and Rules 49 & 73 Probate and Administration Rules. He is seeking the following orders:

a) That this honourable court be pleased to give the full meaning and import of the phrase “THE PORTION IT OCCUPYS” [Sic] in paragraph 14 (b) (ii) in the ruling dated and delivered on 1st October, 2015.

b) That costs be in the cause.

2. The application is premised on the following grounds:

a) That a dispute has arisen as to the exact meaning and import of paragraph 14 (b) (ii) in the ruling dated 1st October, 2015 in relation to the entitlement of Jackson Opondo Mbiya’s family in land parcel No. Marachi/Bujumba/2.

b) Owing to the said dispute, the surveyor is unable to execute the order of the court issued on 3rd December, 2019.

c) The court on 11th March, 2020 ordered the parties to file a formal application to have the dispute resolved.

d) That it is imperative that this application be determined to pave way for the confirmation of grant.

3. In his supporting affidavit, the applicant urged the court to award the family of Jackson Opondo Mbiya land comprising of the homestead only.

4. The objector/respondent did not file any response to the application neither did he file any submissions. Mr. Jumba for the objector/respondent on 29th July 2020 was given an extension of time to file submissions by 31st August 2020 after failing to file the same within the agreed time frame. By 31st August 2020 no submissions had been filed and I therefore proceeded to write the ruling without the benefit of the objector/respondent’s submissions.

5. I have perused the entire ruling by Hon. Judge Tuiyott dated 1st October 2015. This ruling is very clear and does not require any interpretation. When the judge said:

The family of Jackson Opondo Mbiya is entitled to the portion it occupies (sic) on Marachi/Bujumba/2.

He meant the land comprising of the homestead only. This is how the surveyor ought to approach the subdivision.

DELIVERED and SIGNED at BUSIA this 6th day of October, 2020

KIARIE WAWERU KIARIE

JUDGE