



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KISII

SUCCESSION NO 100 OF 2000

KEFA MISATI ONDERE

JACKSON NYATWONGI ASANYO

COUNTY LAND REGISTRAR NYAMIRA.....APPLICANTS

AND

SIMEON MOKAYA ASANYO

NATHAN MOTURI ASANYO

EZEKIEL MAKORI ASANYO

JEREMIAH MOMANYI

HELLEN MORAA ISOE..... RESPONDENTS

RULING

1. By a Notice of Motion application dated 27th June 2019, Jackson Nyatwongi Asanyo ('Jackson'), sought the following orders;

2. *THAT pending the hearing of this application the honourable court be pleased to issue an order compelling the high court registrar to sign transfer documents in regard to parcel No Kitutu Masaba/Mwabosire/653 as per the court ruling dated 23rd day of January 2019.*

2. The respondents filed grounds of opposition to the application. They contend that they have filed Kisii **ELC NO 11 OF 2019** for the cancellation of titles Kitutu/Masaba/Mwabosire/1629, 1630, 1631, 1632, 1633 and 1634.

3. According to the respondents, the area chief and the land registrar had advised that a fresh survey of the land be done so that each beneficiary can benefit equally. They contend that it was not demonstrated that the administrator Simeon Mokaya Asanyo had refused to sign any mutation to prompt the executive officer to sign the mutation. They also claim that the mutation was not approved by the land registrar. They now seek to have the title deeds cancelled and for the court to allow the grant held by Simeon Mokaya Asanyo be implemented to ensure justice is served.

4. They also sought for leave to make a formal application to set aside the order of Hon. Justice Bauni in 2005.

5. Jackson on 23rd December 2019 filed his response to the grounds of opposition. He averred that he is entitled to plot No 630 as per the map and mutation form. However, the administrator Simon Mokaya Asanyo refused to sign the transfer forms in respect of plot No. 630 comprising of 1.54 Ha.

6. Having carefully considered the pleadings before the court, the parties' rival submissions and the evidence on record, the sole issue raised relate to the distribution of the deceased estate. I also note that the file had been marked as closed by Musinga J. However, having considered the issue raised before me, the application herein shall be considered as properly filled before this court.

7. It is my considered view that the issue of distribution can only be settled upon the administrator producing before court a full and accurate account of the completed administration. **Section 83 (g) of the Law of Succession Act** provides *that personal representatives shall within*

six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration. The administrator is thus hereby ordered to produce to the court a full and accurate account of the completed administration.

8. The administrator is hereby summoned on a date to be appointed by the parties to appear before court and produce a full and accurate account of the distribution so far and to indicate to court, where distribution is not complete any special hindrances obstructing his work if at all.

9. A summons is to issue on all beneficiaries to appear in court in person during such account taking.

Dated, Signed and Delivered at KISII this 8th day of October, 2020.

A. K. NDUNG'U

JUDGE