



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 85 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE BARGETUNY KENDUIYWA(DECEASED)

HELLEN CHEMELI KENDUIYWA.....PETITIONER/RESPONDENT

VERSUS

MATHEW KENDUIYWA.....1ST APPLICANT

SUSAN JEBET.....2ND APPLICANT

RULING

1. The applicants chamber summons application dated **8th August 2018** pray among others that the respondent does give accounts on how she has administered the estate herein from the date she was given the powers to carry out the same.
2. The applicants also pray that the surveyors from Nandi and Transzoia counties do carry out survey exercise in the following deceased parcels namely, **SINYERERE /SITATUNGA/BLOCK 3 /TAITO/95, KITALE MUNICIPALITY BLOCK 15 KOITOGOS /742, NANDI NORTH / SANGALO/ TIRIINI 257 and NANDI NORTH/SANGALO /258.**
3. They also prayed that since land parcel number **NANDI /KAMOBO/257** does not belong to the deceased it ought to be expunged. Further that land parcel number **NANDI/KEBULONIK/242** was excluded from the estate yet the same belonged to the deceased.
4. They also prayed that the second applicant was entitled to 9.7 acres and not 5.7 acres so as to be equal with the rest of the beneficiaries.
5. The applicant has sworn a supporting affidavit and has attached the copy of the confirmed grant. He deponed that the 2nd applicant was inadvertently given 5.7acres instead of 9.7 acres which ought to be rectified.
6. He deponed that land parcel number **SINYERERE/SITATUNGA BLOCK 3 /TAITO/95** is equivalent to 85 acres and not 87.3 acres and he attached a copy of the mutation form. Land parcel **NANDI /KAMOBO /257** on the other hand does not belong to the deceased but one **NYABERA KALIKA** and thus it was wrongly included in the estate and subsequent distribution.
7. Finally, on land parcel number **NANDI/KEBULONIK/242** the same belonged to the deceased but was left out erroneously.
8. The respondent in her replying affidavit sworn on **8th December 2018** has denied that she has not fulfilled her mandate as the estates administrator and she attached copies of the title deeds indicating the subdivision of the estate and that already the beneficiaries who included the applicants have their respective titles.
9. She averred that the application forms part of other myriads of applications made by the applicants who were not satisfied with the way the estate was distributed. She deponed that the 2nd applicant who did not swear any affidavit had sold part of her land to one Patricia Acheng Sawo a fact which she knew since she signed for her the sale agreement. She therefore pleaded that the application ought to be dismissed with costs.
10. The parties were advised to file written submissions which they did and the court does not intent to reproduce them here. The applicant basically implores this court to exercise the provisions of Section 83 of the Succession Act which places demand upon the estate administrator to provide accounts and any other dealings in the estate.
11. On her part the respondent submits that the application is another gimmick on the part of the applicants to delay the full implementation

of the grant and that she has fulfilled her mandate by having the beneficiaries obtain their respective titles.

12. It is apparent that the applicants have filed several applications which have gone all the way to the Court of Appeal. This court ordered on 5th December 2016 that the survey work to be undertaken ought to take care of the already existing developments. The court is also aware that both surveyors from Nandi as well as Transzoia Counties attended court and explained themselves on what they had done including the acreages of the parcels among other issues.

13. The issue of the parcels being less or more is really for the survey department to determine. It must be assumed for instance that the 3 acres or thereabouts which the applicants seemed to complain about in the Sinyerere land may have been portions covering the roads and other public utilities. None of the beneficiaries including the applicants have been given more or less acreage.

14. The issue regarding the second applicant was well answered by the respondent in her replying affidavit. She actually sold part of her share and she has not complained even by way of a replying affidavit or at all. The attached agreement has not been controverted at all.

15. What the court find relevant is the issue surrounding the two titles namely **NANDI /KAMOBO/257** and **NANDI/KEBULONIK/242**. The first parcel as per the attached certificate of search indicates the registered owner as **NYABERA KALIKA** and not the deceased whereas the latter belonged to the deceased and does not form part of the estate.

16. The respondent did not mount any serious challenge on the applicant's assertions concerning the two properties. In the absence of any objection, the reasonable thing to do is to have the parcels go to where they legally belonged. Should any other third party have any objection, then he should follow the usual right legal track.

17. In the premises, the court is satisfied that the respondent has not failed to account for the estate from the date she took over. The parties have separately obtained their respective titles and any controversy should now be taken to another forum. To the extent that they have obtained their titles this court does not see the reasons to interfere. There is no evidence that the parcels were more or less in terms of acreages. In any case the confirmed grant apportions out each beneficiaries' acreages.

18. In regard to land parcel number **NANDI /KAMOBO/257** the court is satisfied that the same is not registered in the deceased name but one **NYABERA KALIKA**. The above parcel is therefore expunged from the grant confirmed on **12th July 2012** for all intent and purposes. Should the estate later establish that it belonged to it then it shall be at liberty to apply.

19. Meanwhile land parcel number **NANDI/ KEBULONIK/242** belonged to the deceased and therefore the same ought to be included and the parties be at liberty to apply for its formal distribution as they wish.

20. Those are this courts orders and each party shall meet its own costs.

DELIVERED, SIGNED AND DATED AT KITALE THIS 11TH DAY OF DECEMBER 2020.

H K CHEMITEI

JUDGE.