



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 105 OF 2000

IN THE MATTER OF THE ESTATE OF THE LATE REUBEN NDAYALA NDOLO - (DECEASED)

AND

DUNCAN K. NDAYALA.....1ST PETITIONER (DECEASED)

GEORGE NDAYALA.....2ND PETITIONER (DECEASED)

JOYCE ASEYO KIHAMBA.....3RD PETITIONER

AND

PAMELA VUGUTSA MWIGAI AND 4 OTHERS.....OBJECTORS

VERSES

KENNEDY SUSU ILAYIOGA AND 2 OTHER....INTERESTED PARTIES

DIRECTIONS

1. The court has perused the chamber summons application by the Objectors dated 21st February, 2017 in which they seek among others to revoke the grant issued to the 1st Petitioner who has since died and the same was later issued to the 3rd Petitioner herein.
2. The sum total of the objection proceedings is that the applicants were never consulted in the process and that they were kept in the dark despite being beneficiaries of the estate.
3. The court has perused the said application together with the supporting affidavits as well as the replying affidavits and the submissions by their counsels on record. What is evident is that there are weighty issues which cannot be determined by way of affidavits evidence only. The issues for instance surrounding the question of the parties' relationships with the deceased and each other ought to be determined by oral evidence. There was also the question of whether the applicants were all along in the picture an issue which they have denied.
4. They have also denied that they signed the consent to the mode of distribution and that their signatures were forged. These in my view cannot be determined by paperwork but by hard evidence.
5. In the premises I order that the objection proceedings herein be determined by way of viva voce evidence. Secondly let status quo obtaining as at the date of this directions be maintained and specifically no transfer and sale or charge be effected in any of the parcels of land which emanated from the deceased estate pending the determination of the objection proceedings.
6. The court equally notes that the parcels of land are all situate within the former western province or the counties that fall under it. It would thus be easier and cost effective to have this matter heard and determined in the respective courts. For this reason this cause is hereby transferred to Kakamega High court for hearing and determination or until further orders of the court.
7. Orders accordingly.

Dated, signed and delivered at Kitale this 13th day of May, 2019.

H.K. CHEMITEI

JUDGE

13/5/19

In the presence of:

Arunga for Interested Party

Bororio for the 3rd Petitioner/Respondent

Court Assistant - Kirong

Directions given in open court.