



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO 34 OF 2014

**IN THE MATTER OF THE ESTATE OF ADRIANO MUYANDA MURAMBA ALIAS ADRIANO MUYANDA MARAMBA
(DECEASED)**

RULING

1. The deceased herein, Adriana Muyanda Maramba, died on 11th February 2012. A letter from the Assiatant Chief of Sichilayi Sub-Location, dated 12th September 2012, mentioned that he died possessed of three (3) parcels of land, being Butso/so/Shikoti/2648, 14130 and 14131, and that the persons to inherit them were his son, James Muyanda Nduku and an interested party named as Charles Lukoye Shiyuka.
2. Representation to the estate was sought by James Muyanda Nduku, in his capacity as son. He listed himself as the sole survivor of the deceased. He also stated that the deceased had died possessed of a property known as Butso/so/Shikoti/2648. He did not list any creditors. Letters of administration intestate were duly made to him on 30th May 2014, and a grant duly issued on 3rd June 2014.
3. The said grant was revoked on 7th December 2016, by consent, upon the filing of a summons for revocation of the said grant, dated 20th July 2015, by a brother of James Muyanda Nduku, one George Mzee Maramba Muyanda, on grounds that he, James Muyanda Nduku, was not the sole survivor of the deceased and that he had failed to disclose all the assets of the estate. A grant of letters of administration intestate was issued to James Muyanda Nduku and George Mzee Maramba Muyanda. On 29th December 2016
4. The administrators appointed on 7th December 2016, and to who a grant was issued on 29th December 2016, filed a joint application on 7th February 2017, of even date, seeking confirmation of their grant. They identified themselves as the sole survivors of the deceased, and proposed distribution of Butso/so/Shikoti/2648 and 14130 equally between the two of them. The application did not identify any liabilities or creditors. The said application was placed before the Judge on 28th March 2017 and was allowed, and a certificate of confirmation of grant was duly issued on 13th April 2017.
5. The application that I am called upon to determine is dated 16th May 2016, and was filed in court on even date. It is at the instance of Charles Lukoye Shiyuka. He seeks several orders: -
 - a. That *status quo* as to the occupation and use of Butso/so/Shikoti/2648 by himself be maintained;
 - b. That the orders made on 28th March 2017 confirming the grant made on 7th December 2016 be reviewed or set aside; and
 - c. That the estate be redistributed taking into account his interest in Butso/so/Shikoti/2648 and ordering that the same be given to him.
6. He avers, in his supporting affidavit sworn on 16th May 2017, that he had bought Butso/so/Shikoti/2648 from the deceased in 1972, and that the Assistant Chief, in the letter referred to in paragraph 1 of this ruling, had recognized him as an interested party. He states that he financed the succession cause, but was not notified when the matter came to confirmation. He claims that George Mzee Maramba Muyanda was threatening to evict him.
7. The reply to the application is by George Mzee Maramba Muyanda, through an affidavit he swore on 25th July 2017. He says that the applicant, Charles Lukoye Shiyuka had not purchased the subject land from the deceased, but instead he had committed trespassed on the land. The deceased gave him an option to buy the land at a consideration of Kshs. 350, 000.00 and a goat. He never paid the consideration. A meeting was allegedly held after the deceased's death, and he was given a chance to pay up but he never did.
8. I have scrupulously perused through the record before me and I have not come across a record of a response to the reply by the applicant.
9. The matter was fixed on 22nd February 2018 for hearing on 11th December 2018. On the date fixed for hearing the applicant appeared with

his advocate, the two administrators were present but without their advocates.

10. Both sides addressed me. Mr. Getanda for the applicant stated that the applicant was a creditor of the estate, having acquired an interest in the property through a sale transaction between him and the deceased. He urged that his interest in the estate ought to have been taken into account. The first administrator, James Muyanda Nduku, stated that the applicant had bought the land from the deceased long before he, the first administrator, was born. George Mzee Maramba Muyanda, the second administrator, asserted that the applicant had never bought the land as no sale agreement had been placed before the court. He claimed that the alleged sale transaction was in 2014 between the applicant and the first administrator.

11. Although the applicant was mentioned in the Assistant Chief's letter as an interested party, it was not indicated in what respect he was an interested party. He claims an interest in the property through purchase from the deceased in 1972. A copy of the title deed for the property, Butsotso/Shikoti/2648, dated 18th May 1998, indicates that the deceased was registered a proprietor of the property on 24th April 1985 and a title deed was issued to him on 18th May 1998. One would wonder why, if the land had been sold to the applicant in 1972, the same was then still registered in the name of the deceased thirteen (13) years later. Secondly, the deceased died in 2012, I wonder why he did not cause, since 1998, when the land was registered, the land to be transferred to the name of the applicant. The applicant has not placed before me any sale agreement between the deceased and himself over Butsotso/Shikoti/2648, bearing in mind that the law requires that sale of land be evidenced by some memorandum in writing according to the Law of Contract Act, Cap 23, Laws of Kenya. I note that transactions relating to agricultural land, for Butsotso/Shikoti/2648 appears to me to be such land, must be approved, by a land control board established under the Land Control Act Cap 302, Laws of Kenya. He has equally not placed before me any valid decree of a court awarding the land to the applicant.

12. The issues that arise from the subject application turn on ownership of Butsotso/Shikoti/2648, and rights relating to its use and occupation. The High Court no longer has jurisdiction to determine questions around title to land, and rights over its use and occupation. That jurisdiction has been vested in a court with equal status with the High Court by virtue of Article 162(2) of the Constitution. Article 165(5) of the Constitution emphasizes that the High Court shall have no jurisdiction over matters the subject of Article 162(2). Parliament passed the Environment and Land Court Act, No 19 of 2011 and vested it with jurisdiction to determine questions relating to title to land, and over matters around occupation and use of land.

13. In view of the above, I cannot, sitting, as I am, as a Judge of the High Court, make any determinations as to whether the applicant had validly acquired any interest in Butsotso/Shikoti/2648 through sale from the deceased in 1972, and whether he is entitled to occupy and use the same. That jurisdiction lies with the Environment and Land Court, and the applicant ought to establish his claim to the said property through the said court.

14. In view of the above, I do not find any merit in the application dated 16th May 2016. I hereby dismiss the same with costs. The *status quo* orders made on 11th December 2018 are hereby accordingly discharged.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 14th DAY OF June, 2019

W. MUSYOKA

JUDGE