



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**PROBATE & ADMINISTRATION NO. 106 OF 2014**

**IN THE MATTER OF THE ESTATE OF:**

**RAPHAEL CHARLES MAKOKHA..... DECEASED**

**BETWEEN**

**ZILPA CHEPKEMOI BETT.....PETITIONER/ RESPONDENT**

**AND**

**MARY SHEILA ONYANGO ODUOR..... OBJECTOR/RESPONDENT**

**MATHEW TONADO OKEC.....INTERESTED PARTY/APPLICANT**

**RULING**

1. There are two applications which are still undetermined. On 25<sup>th</sup> September 2019 the parties agreed, through their counsel on record, to have them disposed together by way of written submissions. On 10<sup>th</sup> June 2019 Mr. Fwaya learned counsel for the first petitioner had not filed submissions and he requested an extension of 14 days to do so. The other counsel on record did not oppose. The application was allowed. By 24<sup>th</sup> June 2019 he had not filed the submissions and I therefore proceeded to write my ruling without the benefit of the said submissions.

2. By a notice of motion dated 8<sup>th</sup> October 2015, Mathew Tonado Okech interested party/applicant moved the court to be allowed to be enjoined as an interested party. His application was based on the following grounds:

- a) That he has beneficial interest in the estate of the deceased herein;
- b) That had purchased a portion of land from the deceased and took possession in his lifetime; and
- c) That he has extensively developed the portion.

3. This application was opposed by Pauline M. Makokha, a co-administrator on the following grounds:

- a) That she did not, together with her children, benefit from the said sale; and
- b) That no documentation was provided to authenticate the said sale.

4. Contrary to the averment by Pauline M. Makokha, The applicant attached in his application a copy of sale agreement and a copy of acknowledgment of the last payment of Kshs.3,000, 000/= by the deceased. I am therefore satisfied that the application is merited. I make an order that Mathew Tonado Okech, a purchaser, be included in the list of beneficiaries of the estate of the deceased.

5. Pauline Mary Makokha, the co-administrator herein, moved the court by way of chamber summons under section 45 of the Law of Succession Act and Rule 49 and 73 of the Probate and Administration Rules for the following orders:

- a) That the court issue an order directing the Registrar of lands to produce in court a Certified copy of land parcel **L.R. No.2/241 NAIROBI GITANGA ROAD**
- b) That the Court issue an order allowing the applicant to rent out the land parcel **L.R. No.2/241 NAIROBI GITANGA ROAD** for

her personal upkeep until the distribution of assets herein.

c) That the court to vary the orders of 8<sup>th</sup> October 2014 and instead direct that the rent from the estate be paid directly to the applicant.

6. The application was premised on the following grounds:

a) That the applicant has not been able to produce the title deed to the property; and

b) There is a danger of the property going to waste.

7. The issue of the property going to waste does not arise. The applicant and the co-administrator have a mandate to guard against any threat of encroachment to the estate by any person.

8. It would not be prudent for me to issue an order in favour of one administrator where there are more than one. This application does not appear to be made in good faith. I am making an order that the administrators herein to move with speed and distribute the estate so as these kind of “games” are eliminated altogether.

9. The administrators ought not to compete on the issue of which assets should form part of the deceased. The law is very clear. These are all the assets which were owned by the deceased herein whether located in Busia, Nairobi or elsewhere. I am therefore making an order for a complete compilation of the assets of the deceased and be available for distribution. The administrators herein are given 60 days to file in court the said list of assets for distribution.

**DELIVERED and SIGNED at BUSIA this 20<sup>th</sup> day of November, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**