



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 668 OF 2015**

**IN THE MATTER OF THE ESTATE OF ISMAIL BWAKALI SAMBICHA alias BWAKALI SAMBICHA ISMAIL (DECEASED)**

**RULING**

1. The Motion for determination is dated 11<sup>th</sup> October 2016. It seeks the cancellation of the subdivision of S/Wanga/Buchifi/1303 into S/Wanga/Buchifi/2152 and 2153, and its reversion to the original title. The application is at the instance of the administrator of the estate of the deceased, Evaline Auma Okumu. She avers that the person she has named as the respondent, Samwel Moses Kweyu, had bought a parcel of land from the deceased, which was to be carved out of S/Wanga/Buchifi/1304 and not S/Wanga/Buchifi/1303. She accuses the respondent of having fraudulently caused the subdivision referred to here above.

2. She has attached to her affidavit a copy of an official search in respect of S/Wanga/Buchifi/1303. The search indicates that S/Wanga/Buchifi/1303 arises from a subdivision or partition of S/Wanga/Buchifi/1037. It would appear that the subdivision occurred on 21<sup>st</sup> October 2008, and the property was shared out between the administrator and the respondent at the ratios of 3 acres to 2 acres. The title was closed on 4<sup>th</sup> February 2009 when new numbers were issued, being S/Wanga/Buchifi/2152 and 2153.

3. The deceased herein died on 17<sup>th</sup> December 2002. Representation to the estate herein was sought and obtained by the administrator herein in her capacity as his daughter and sole survivor. The grant of letters of administration intestate was made to her on 13<sup>th</sup> July 2016 and issued on 6<sup>th</sup> September 2016. The said grant is yet to be confirmed. The deceased is expressed to have died possessed of a piece of land known as S/Wanga/Buchifi/1037. A certificate of official search dated 14<sup>th</sup> September 2015 indicates that the same resulted from a subdivision of S/Wanga/Buchifi/580. It would appear that it was subdivided in 1981 into three portions, being S/Wanga/Buchifi/1303, 1304 and 1305; and it would appear that the beneficiaries of the subdivision were Bwakali Sambiecha Ismael, Nyongesa Mola Ochimba and Elijah Omugisu Zakayo. However, the certificate does not indicate which of the three numbers were allocated to each of the three individuals named. The title was closed on 7<sup>th</sup> April 1989.

4. From the material before me it is clear beyond peradventure that as the time the deceased died in 2002, the property listed in the petition, S/Wanga/Buchifi/1037, as belonging to him, had ceased to exist following its subdivision in 1981 and the closure of its register in 1989. It would appear that he died possessed of one of the resultant portions of its subdivision, that is to say S/Wanga/Buchifi/1303 or 1304 or 1305. The administrator has not placed any record to show which of these three was in the name of the deceased as at the date of his death.

5. The application before me mentions S/Wanga/Buchifi/1303 and 1304, yet nothing has been placed before me to indicate whether these two parcels of land were ever registered in the name of the deceased. I can see from the certificate of official search in respect of S/Wanga/Buchifi/1303, dated 1<sup>st</sup> April 2015, that there was a subdivision thereof in 2008 into S/Wanga/Buchifi/2152 and 2153. Yet, the certificate does not indicate who the proprietor of the property was before the subdivision. If the proprietor thereof was the deceased herein, then the alleged subdivision was wrongful as it was done after his death and prior to confirmation of the grant, and it would be an affront to sections 45 and 82 of the Law of Succession Act, Cap 160, Laws of Kenya. However, I am unable to draw that conclusion before it is established that the said property was once registered in his name. I do not blame the administrator for this, I think the certificates of official search are filled in a manner that is not very helpful to the parties and to the court.

6. For the reasons given above, I am unable to grant the orders sought in the application dated 11<sup>th</sup> October 2016. I shall dismiss the same with no orders as to costs. I shall direct the administrator to obtain fresh certificates of official searches on the ownership of S/Wanga/Buchifi/1303, 1304 and 1305. I direct the Deputy Registrar to furnish the Land Registrar responsible for Kakamega County with a certified copy of this ruling so that he can furnish the administrator with certificates of official searches of all the properties mentioned in this ruling with the correct details on ownership, that is to say S/Wanga/Buchifi/1303, 1304, 1305, 2152 and 2153. The administrator shall thereafter make a fresh application.

7. It is so ordered.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 3<sup>RD</sup> DAY OF DECEMBER , 2018**

**W. MUSYOKA**

**JUDGE**