



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.266 OF 2008**

**IN THE MATTER OF THE ESTATE OF NYANGWESO WESUSA SAKWA - DECEASED**

**BETWEEN**

**AGNETA KALERWA NYANGWESO.....PETITIONERS/ADMINISTRATORS**

**AND**

**1. TRUTEYA ONYEKO NYANGWESO**

**2. VITALIS KWEYU**

**3. JOSEPH ASEKA NYANGWESO.....PROTESTORS**

**RULING**

1. The petitioner/administrator herein, Agneta Kalerwa Nyangweso, had on an unstated date filed an application for confirmation of grant in which she proposed how the various parcels of land belonging to the deceased are to be distributed. A widow to the deceased, Trufeya Onyeko Nyangweso and two sons to the deceased, Vitalis Kweyu and Joseph Aseka Nyangweso, filed a protest on the mode of distribution proposed by the administrator and in addition filed their own proposal on the mode of distribution of the estate.

2.The advocates for the two parties, Mr Ombaye acting for the administrator and Mr Masheti acting for the protestors, then proposed that the matter proceeds by way of filing written submissions and that the court proceed to decide on the mode of distribution from the submissions and the modes of distribution proposed by the parties.

3. In his submissions, the advocate for the protestors stated, inter alia, that the petitioner/administrator has obtained title to land Parcel No. East/Wanga/Mung'ang'a/86, which is part of the deceased's estate, before the conclusion of these proceedings, which act he said is illegal and he requested the court to nullify that registration and order that the title reverts to the deceased for distribution of the same to the beneficiaries.

4. In her proposal for mode of distribution, the petitioner/administrator has not proposed to give any benefit to her co-widow, Agneta Kalerwa. She has not given any reason for her proposal. The protestors on the other hand are proposing that Agneta Kalerwa be given one acre of land from land Parcel No. East/Wanga/Mung'ang'a/86.

5. Similarly the petitioner/administrator has not proposed to give any benefit to Joseph Aseka Nyangweso. There is no reason given for that. The protestors are proposing that the said Joseph Aseko

Nyangweso be given land Parcel No. East/Wanga/Mung'ang'a/87.

6. In their submissions the advocates for the protestors attached an agreement from the family on the mode of distribution of the estate. The petitioner/administrator did not comment on the mode of distribution proposed in the said agreement.

7. In my view it is futile to proceed with the distribution of the estate if the petitioner/administrator has already transferred land Parcel No East/Wanga/Mung'ang'a/86 to herself. The protestors should first have sought for the cancellation of the title for it to revert to the name of the deceased before distribution of the estate is done.

8. The submissions by the advocates do not address the reasons for mode of distribution proposed by the opposing parties. This could only have been done by affidavit evidence or oral evidence in court. No affidavit evidence was attached to the application for confirmation of grant nor to the protest. More so, it was unprocedural for the advocates for the protestors to attach to their submissions an agreement on the mode of distribution that the opposite party did not have an opportunity to comment on. It is difficult for the court to decide on the mode of distribution of the deceased's estate herein without hearing the parties themselves.

9. In view of the above I hereby make the following orders:-

(1) The allegation that land Parcel No. East/Wanga/Mung'ang'a/86 has changed hands to the petitioner/administrator to be investigated and if found to be true then the protestors to make an application for cancellation of the title for the title to revert to the name of the deceased before an application for confirmation of grant is considered.

(2) Matter then to proceed by way of oral evidence with the protestors acting as the plaintiffs and the petitioner/administrator as the defendant.

(3) Both parties to file and serve witness statements and any other documents they may wish to rely on in the case.

**Dated, signed and delivered at Kakamega this 23<sup>rd</sup> day of March 2017.**

**J. NJAGI**

**JUDGE**