



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE AND ADMINISTRATION NO.221 OF 2009

IN THE MATTER OF THE ESTATE OF INOKA NYUMBU MBANDA.....DECEASED

JOSEPH MBANDA NYUMBU.....PETITIONER

VERSUS

EMMANUEL OKUMU OBORE.....APPLICANT

RULING

(Chamber Summons Application dated 22nd April, 2016)

1. The Applicant, Emmanuel Okumu Obore brings his application under Section 26 of the Law of Succession Act, Chapter 160. In the application dated 22nd April, 2016 he seeks orders as follows:

“1. THAT this Honourable Court be pleased to make reasonable provision of 2 acres out of the Deceased’s Estate to the applicant herein.

2. THAT in the alternative but entirely without prejudice to the foregoing, the Applicant be recognized and declared a dependant and beneficiary to two acres of the deceased’s estate namely BUNYALA/BULEMIA/49 and be allotted the 2 acres out of the deceased’s parcel of land BUNYALA/BULEMIA/49.

3. THAT the costs of this application be provided for.”

2. The Applicant named the Petitioner, Joseph Mbanda Nyumbu the Respondent.

3. In brief, the Applicant’s case is that he bought a portion of L.R. No. BUNYALA/BULEMIA/49 from the deceased Inoka Nyumbu Mbanda. These proceedings relate to the estate of the said deceased. After the demise of the deceased he bought another portion of the said parcel of land from the Petitioner. In total he bought two acres of land and has since taken possession and settled on that land.

4. It is further the Applicant’s case that at the time of filing this cause the Petitioner acknowledged him as a liability to the estate of the deceased.

5. It is therefore the Applicant’s case that he is entitled to 2 acres out of L.R. No. BUNYALA/BULEMIA/49 which is part of the estate of the deceased.

6. Though there is indication on record that the application was served, the Petitioner did not file a response.

7. Section 26 of the Law of Succession Act, Cap. 160 states:

“Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.”

8. A reading of the provision shows that the same is meant to take care of dependants not adequately provided for by will, gift or law. In the case at hand, the Applicant’s interest is acknowledged by the Petitioner through the affidavit (Form P&A 5) sworn on 6th August, 2009 in support of the petition for grant of letters of administration intestate.

9. The Petitioner has not formally denied the fact that the Applicant is entitled to two acres from L.R. No. BUNYALA/BULEMIA/49 which is one of the assets of the deceased.

10. I do not really understand what the Applicant hopes to attain through the orders he seeks from the Court. Section 55(1) is clear that no grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by Section 71.

11. A perusal of the file herein shows that no confirmation of the grant has been done. The Applicant may be facing certain challenges in connection with the transfer of his entitlement to him but the route taken cannot take him to his destination. He must look for the correct legal means for achieving his desires.

12. I have said enough to show that the application herein lacks merit. The same is dismissed. As the Petitioner did not file a response, there is no order as to costs.

Dated, signed and delivered at Busia this 2nd day of March, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT