



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO.1163 OF 2012**  
**MARK SAVAKAMA WERAFICHI.....PETITIONER**  
**VERSUS**  
**JOICE K. SAVAKAMA.....OBJECTOR**

**J U D G M E N T**

**The Application**

1. The Objector brought this Summons for revocation under Rules 49 and 59 (1) of The Probate and Administration Rules and Section 76 of The Law of Succession Act, Cap 160 Laws of Kenya praying for, among other orders, an order for the annulment of the Grant of Administration issued to the Petitioner on the 31/01/2013 and confirmed on 13/03/2014. The Objector also prays that a fresh grant be issued in the joint names of the Petitioner and the Objector for proper distribution of the deceased's estate.
2. The Summons is supported by the Objector's affidavit sworn on 24/03/2014. From the said affidavit, the deceased Savakama Werafichi was survived by three (3) sons namely John Savakama, Ngaira Savakama and Mark Savakama. The Objector is wife to Mark Savakama (now deceased) who passed away on 20/02/1999 and left behind three (3) sons, namely Joel John, Thomas John and Furukha John. The Objector also states in her affidavit that her brother-in-law Ngaira Savakama also died and was survived by his wife Tina Ngaira and two children being Shikhuma Ngaira and Patrick Ngaira. The Objector's complaint as per paragraph 8 of her affidavit is that she has been completely overshadowed in these proceedings although two (2) out of her three (3) children have been catered for. She claims that her son Thomas Mark has not been given a share of the deceased's estate. The Objector proposes to distribute the deceased's estate comprised on L.R. No.S. Kabras/Chemuche/797 in equal share of 1.8667Ha among the following persons: Mark Savakama Werafichi, Joice K. Savakama (instead of John Savakama) Tina Ngaira representing the family of Ngaira Savakama.

**Response to the Summons**

3. The Summons is opposed vide the Replying Affidavit sworn by the Petitioner, Mark Savakama Werafichi sworn on 05/06/2014. The deponent says that as eldest surviving son of the deceased he took the leading role in these proceedings and in doing so, he considered the interests of all the beneficiaries. He contends that according to the agreement of the family, Ngaira Savakama's share should go to the children with the Objector having a life interest in the same. He prays that the objection be dismissed as the same lacks merit.

**Background**

4. The deceased in this case, Savakama Werafichi died on 31/03/1990 at the ripe age of 99 years. He was survived by his wife Julia Kevali Savakama, his son, the Petitioner herein and 5 grandchildren. He also left behind land parcel S. Kabras/Chemuche/797 measuring 5.6Ha. It is the distribution of this estate that is the bone of contention.

### **Evidence and Submissions**

5. Both the Objector and the Petitioner testified. The Objector's case being that the deceased's estate was not equally distributed among the heirs or beneficiaries of the deceased. On the other hand, the Petitioner contends that every beneficiary, according to the three (3) sons of the deceased were given their rightful share of the estate of the deceased. The Objector alleges that after taking into account the shares set out in the Certificate of Confirmation dated 13/03/2014, there is still 1.17Ha of the deceased's estate that is unaccounted for, hence her prayer to have the confirmation annulled and/or the mode of distribution reviewed.

### **Analysis and Determination**

6. From the evidence, the three (3) sons of the deceased are represented by the Petitioner, the Objector and Tina Ngaira who is wife to Ngaira Savakama. The rest of the beneficiaries are grandchildren of the deceased. The law on distribution clearly states that the interests of all survivors of a deceased's estate ought to be considered during distribution. See the case of **In the Matter of the Estate of Muriu Kamau (Deceased) Eldoret High Court Succession Cause No.7 of 1998.** The rights of children of a deceased person are set out in Sections 35 and 38 of Cap 160. Section 38 of the Act provides that surviving children of a deceased person shall share the deceased's estate equally among themselves. This was the position held by Koome J, (as she then was) in the case of **In the Matter of the Estate of Patrick Mungai Kugega (Deceased) – Nairobi High Court Succession Cause No.959 of 2001.**
7. In the instant case, the distribution done by the Petitioner does not reflect equality of sharing among the three (3) sons of the deceased person; especially in view of the fact that 1.17Ha out of the 5.6Ha of the deceased's estate remains unexplained. It is for this reason that I am satisfied that the Certificate of Confirmation issued on 13/09/2014 should be annulled. A new Certificate of Confirmation shall issue in the following terms:-
  1. Mark Savakama Werafichi - 1.8667Ha
  2. Joice K. Savakama - 1.8667Ha (To (representing the family hold in trust for of John Savakama) her children)
  3. Tina Ngaira - 1.8667Ha (To (representing the family hold in trust of Ngaira Savakama) for her children)
8. Each party in this case shall bear their own costs.
9. Orders accordingly.

Judgment delivered, dated and signed in open Court at Kakamega this 2<sup>nd</sup> day of June 2016.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Mrs Muleshe (present) for Objector/Applicant

Miss Akinyi (present) for Petitioner/Respondent

Mr. Lagat -Court Assistant