



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 777 OF 2010**

**IN THE MATTER OF THE ESTATE OF JOHN KANJI MAKAMU .....DECEASED**

**BETWEEN**

**EVERLYNE MANDAKHO JUMA .....PETITIONER/APPLICANT**

**AND**

**GILBERT LUNG'AYA MUTANGANYIKA**

**OLIVA KHAMALI MAKAMU .....RESPONDENTS**

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

**Introduction**

1. Ngoniole Shikhole Makamu died on the 21/12/1998. He was survived by a widow SILIPA MASITSA MAKAMU and a son JOHN KANJI MAKAMU. Before his death he was the absolute owner of all that piece of land known as LR. No. Kakamega/Virembe/571.

2. On 9.10.2006 grant of Letters of Administration Intestate was issued to his son JOHN KANJI MAKAMU in succession cause no. 379 of 2006. He made an application for confirmation of the same on the 22.2.2007. Unfortunately before the confirmation of grant was done JOHN KANJI MAKAMU died. This was on the 3<sup>rd</sup> 2008 Olivia Khamali Makamu his sister then applied for rectification of the grant issued on 9.10.2006. The grant was amended and confirmed in the name of OLIVA KHAMALI MAKAMU who now became the administrator of the estate of the deceased herein and who held a life interest on parcel No. Kakamega/Virembe/571 together with Silipa Masitsa Makamu the widow of the deceased herein NGONIOLE SHIKHOLE MAKAMU alias MAKAMU SHIKHOLE

**The Application**

3. The widow to the deceased's son JOHN KANJI MAKAMU then filed this succession cause no. 777 of 2010 in respect of her deceased husband's estate. She was granted letters of administration intestate on 15/12/2011. She then filed a chamber summons dated 10/09/2012 wherein she sought for orders that

a) This Honourable court be pleased to issue an order to the land registrar to revoke the title deed Nos. ISUKHA/VIREMBE/1651 and ISUKHA/VIREMBE/1650 and revert back to the older No. ISUKHA/VIREMBE/571 to enable her to proceed with filing letters of grant issued by the Honourable court.(sic)

b) The grant issued to the petitioner/applicant herein be confirmed as per the application for

confirmation dated 12<sup>th</sup> April, 2012.

4. The application is based on the ground that the respondents GILBERT KUNGAYIA MUTANGANYIKA and OLIVIA KHAMALI MAKAMU obtained title deeds without following the right procedure and that Gilbert is a stranger to the family of the deceased and therefore should not be a beneficiary. She has annexed her affidavit in support of the chamber summon wherein she states that after being issued with Grant of Letters Administration intestate of her late husband she proceeded to the lands registry. Where she discovered that land parcel No. Isukha/Virembe/571 had been subdivided into two portions namely, ISUKHA/VIREMBE/1651 and 1650 respectively. She also claimed that the 1<sup>st</sup> Respondent was a stranger to the deceased's family and therefore not a beneficiary to her husband's estate.

### **Response**

5. Her application was opposed by the 2<sup>nd</sup> respondent OLIVIA KHAMALI MAKAMU the daughter of Ngoniole Shikhole Makamu alias Makamu Shikhole and sister to John Kanji Makamu. The objector explained how she became the administrator of her father's estate after her brother died. She also explains that she is ready to give half share of the deceased's estate to the children of her late brother or to the applicant to hold in trust for her children. She adds that following the partition, 3.68ha is what now comprises land title No. Kakamega/Virembe/1650. She proposes that once land title No. Kakamega/Virembe/1650 is sub-divided into two; her mother will have a life interest on both in accordance with the certificate of confirmation.

6. The respondent further explains that Gilbert Lungayia Mutanganyika purchased ¼ acre from her late father and settled on his portion even before her father died. She also says that upon partition following succession Gilbert became owner of Land Parcel No. ISUKHA/VIREMBE/1651 which is duly registered in his name.

### **Submissions and Determination**

7. The chamber summons dated 10/09/2012 was canvassed orally. The Respondents were the plaintiff's and Everlyne the Defendant. The plaintiff called only two witnesses, SILIBA CHILWABO and OLIVIA KHAMALI MAKAMU while Everlyne was the only one who testified in support of her case.

### **Issue for Determination**

8. The issue for determination is one of distribution of the deceased's estate. It is common ground that all the parties herein live on the same portion of land known as Kakamega/Virembe/1650. This portion was visited by the District Surveyor, who identified the people living on the said parcel and gave his report dated 6<sup>th</sup> January, 2015. The said land parcel is approximately 3.41Ha (8.435 acres). The survey has identified the persons living therein. Since most of the people mentioned in the report are not known to this court, the plaintiff and defendant should either jointly or singly file afresh summons for confirmation of grant, showing clearly the mode of distribution of land parcel No. ISUKHA/VIREMBE/1650 bearing in mind that they will both share the same equally and that any buyers can only claim under either of the family members. This should be done within thirty (30) days from the date of this judgment.

Orders accordingly

Judgment delivered, dated and signed at Kakamega this 1<sup>st</sup> day of September, 2016

**R. N. SITATI**

**JUDGE**

In the presence of;-

Present in person .....For Petitioner/Applicant

Mr. Nyikuli.....For Respondents

Mr. Lagat.....Court Assistant