



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO. 613 OF 2004
IN THE MATTER OF THE ESTATE OF MURUNGA SIMWA....DECEASED
AND
ELEMINA KHAMUYA CHETO.....PETITIONER

RULING

Introduction

1. The case herein was heard by Justice Chitembwe who in his ruling dated 18.09.2014 gave the following directions.

1. That Kakamega Land District Registrar and Surveyor to visit the suit property number S. Kabras/Shamberere/315 and mark out the portions occupied by the family of Margaret Abwoba's family, the portion occupied by African Kenya of Soi church, portions occupied and utilized by the two parties and any other purchase on the ground.
2. Parties herein to share the costs of the survey work
3. Thereafter the matter to be listed for final ruling on distribution of the estate

Determination

2. On the 9.7.2015 this case came up before Bwonwonga Judge who was taking part in the Justice at last initiative. From the pleadings, it seems M/S Muleshe Advocate had problems and was frustrated by the survey office who were required to visit the suit land on 8.4.2015 but they did not do so even after she had made payments on 16.03.2015.

3. This court took over this matter on 28.06.2016 and ordered that a copy of the surveyors report dated 27.04.2016 be filed by Mrs Muleshe before any ruling on distribution is given. The said report has been filed. It was prepared by Mr. Geoffrey Edasi who visited the suit land on 16.03.2016, measured and made general observations before indicating the resultant portion occupied by the parties on the ground as follows;-

1. Margaret Abwoba's family – 0.44Ha
2. African Kenya of Soi Church – 0.10Ha

- 3. Elimina K. Chetto – 0.045Ha
- 4. Catherine Musiko – 0.26Ha
- 5. Margaret Mwonyonyo – 0.30Ha
- 6. David Amwayi – 0.60 Ha

4. The surveyor noted that a portion measuring 0.12ha was not being utilized by any of the parties named above, although the respondent claimed to have apportioned it to the Petitioner. The respondent was present on site during the surveyor’s visit.

5. The task for this court is therefore to distribute the net intestate estate of David Murunga Simwa (deceased). According to the survey, it is clear that a big part of the deceased’s land was sold and the purchasers are in occupation thereof.

6. This court will therefore not interfere with those portions as measured by the district surveyor, and accordingly the deceased’s net intestate estate will be distributed as follows;-

- a. Margaret Abwoba’s family – 0.44ha purchasers
- b. African Kenya of Soi Church – 0.10Ha
- c. Elimina K. Chetto – 0.045Ha Plus 0.12Ha =0.165 Ha
- d. Catherine Musiko – 0.26Ha
- e. Margaret Mwonyonya – 0.30Ha
- f. David Amwayi – 0.60 Ha

Each party in these proceedings shall bear their own costs

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 1st day of September 2016

R. N. SITATI

JUDGE

In the presence of;-

.....Mr. Getanda for Mrs. Muleshe(present).....For Petitioner

.....N/A.....For Respondent

.....Mr. Lagat.....Court
Assistant