



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 282 OF 2007

IN THE MATTER OF THE ESTATE OF SAMWEL MWISUKHA -----DECEASED

BETWEEN

MARGARET MASITSA MUSONYE.....PLAINTIFF/PETITIONER

AND

MARBLE KHASANDI MUCHESIA.....DEFENDANT/OBJECTOR

J U D G M E N T

Introduction

1. The deceased herein SAMWEL MWISUKHA died on the 20.11.1995 leaving behind a son Jackson Mbiya Mukoto and a daughter Margaret Masitsa Mukoto. The son Jackton Mbiya Mukoto was married to Marble Khasandi Muchesia and they had children together but he died in 2007 and was buried on his shamba at Lurambi on the 17.02.2007.

2. Margaret Masitsa Mukoto then petitioned for grant of letters of administration for the estate of the deceased and a notice was placed in the Kenya Gazette on the 31.08.2007 being gazette notice No. 8332. The said grant was confirmed on 31.10.2007 but after the court heard the summons for revocation/annulment of grant dated 28.09.2009 by MARBLE KHASANDI MUCHESIA it revoked the said grant and all orders made pursuant thereto. A fresh grant in respect of the estate of the deceased was then issued to Marble Khasandi Muchesia on the 09.03.2016.

Determination

3. Parties did not agree on the mode of distribution and the matter proceeded by way of oral evidence. Marble was the plaintiff while Margaret the defendant. Margaret told the court that her father had two plots one at Idenye sub location and the other at Kakamega Lurambi. Before the deceased died, he divided the estate between her and her brother Jackson who was given the Lurambi plot while she remained at Idenye. Marble on her part claimed that the deceased who is her father in law had only one plot namely L.R.No. Isukha/Murhanda/845 where she buried her husband. She also claimed that her father in law did not give Margaret the Idenye plot. She wants to be given the whole of plot number Isukha/Murhanda/845.

4. Parties did not file any written submissions on the mode of distribution of the deceased's estate.

5. The only issue for determination in this case is the distribution of the deceased's estate. The search dated 21.02.2007 shows that Isukha/Murhanda/845 measures approximately 1.4Ha and it is still registered

in the names of the deceased. It is the only estate of the deceased shown on record. To facilitate distribution of the estate, this court is guided by the provisions of Section 38 of the Law of Succession Act. When the deceased herein died he had no spouse but left two children surviving him. One of the children died but left a spouse who is the administrator of the deceased's estate.

6. It will be prudent for Marble to apply for Grant of Letters of Administration of her late husband's estate. She is entitled to the deceased's estate by virtue of being a wife to the son of the deceased. Thus according to the provisions of the Law, the deceased estate herein shall be divided equally between the two children of the deceased, namely Margaret Masitsa Musonye and Jackson Mbiya Mukoto who is survived by Marble Khasandi Muchesia. In order to expedite the process of distribution, Marble Khasandi Muchesia shall, within ninety (90) days of the ruling herein file summons for Confirmation of the Grant. If she fails to do so within the stipulated time, Margaret Masitsa Musonye shall proceed to do so

7. Each party to these proceedings shall bear their own costs.

Orders accordingly

Judgment delivered, dated and signed in open court at Kakamega this 1st day ofSeptember 2016

R. N. SITATI

JUDGE

In the presence of;-

.....Mr. Khayumbi (absent).....Plaintiff (Marble)

.....Mr. Aburili (present).....Defendant (Margaret)

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