



REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO. 602 OF 2009

IN THE MATTER OF THE ESTATE OF: LUKA SHIVAMBO MALALU (DECEASED)

BETWEEN

TIMOTHY KHANGWANA SHIVAMBO &

MARKO SHIBAMBO MALAU.....PETITIONERS

AND

LABAN SHOKHUNJIRA SHIBAMBOOBJECTOR

RULING

The late Luka Shivambo Malalu died on 31st December, 1995. He was survived by four sons namely:-

1. Mark Malalu Shivambo
2. Timonthy Kangwana Shivambo
3. Obadia Zaphania Shivambo
4. Laban Shokhunjira Shibambo

The first three sons filed this succession cause seeking to inherit Plot Number S/KABRAS/SHAMBERERE/1520 measuring 3.90 Ha. A grant was issued to Timothy on 3rd March, 2010.

A fresh grant was issued to Timothy and Marko Malau Shivambo on 9th July, 2010. The grant was confirmed on 13th July, 2011 whereby the land was distributed equally amongst the first three sons.

The Objector who is the deceased's first born son filed an application dated 16th March, 2012 seeking to have the grant revoked. The matter proceeded by way of oral evidence. The Objector's evidence is that the deceased had two wives. Himself and Timothy are from the first wife while the other two sons are from the second house. The deceased distributed his land and each son was shown where to build. He was given 2½ acres and he processed his title. This Plot Number KAKAMEGA/SHAMBERERE/1521 measuring 1.27 Hectares. It is his evidence that the Petitioners were given their own land and his late father retained two acres. He would like to have the two acres subdivided equally amongst the four sons so that he can get ½ acre. According to him, the Petitioners did not process their titles.

Timothy Kangwana Shivambo testified on behalf of his other brothers. His evidence is that the Objector was given three (3) acres. The main plot was 12½ acres. The remaining 9½ acres was to be divided equally among the three sons. It is true each of the sons was shown where to build. He remained with the parents until their death. The parents had no separate place to cultivate. The Objector was given his own

land.

I have gone through the pleadings and the evidence herein. The only issue for determination is whether the Objector should benefit from Plot Number S/KABRAS/SHAMBERERE/1520. The pleadings show that Plot Numbers 1520 and 1521 were created from Plot Number 638. I believe Plot Number 638 is the one that was measuring 12½ acres.

Plot Number 638 was sub-divided and the Objector became the proprietor of Plot Number 1521 measuring 1.27 Hectares. He obtained his title deed on 13-1-2004. The sub-division was done in 1983. It is not clear how this was done as by the time the sub-division was done there was no confirmed grant. However, Plot Number 1520 remained in the names of Shibambo Malalu, the deceased herein.

According to the Petitioners the Objector wrote a letter indicating that the deceased distributed his land to his four sons and his brothers were to process their title. The letter was produced as exhibit one (1) for the Petitioners.

It is clear from the evidence that the Objector processed his own title deed. There is no evidence that the deceased retained two acres. The remaining plot seems to have been in the name of the deceased. There is no evidence as to what acreage the other three sons were given each when the Objector was given 1.27Ha. The remaining plot is 3.9Hectares. This gives the three other sons 1.3Ha each. There is no requirement that distribution of an estate should be exactly equal in proportionality amongst the beneficiaries. The three sons agreed to share the 3.9 Ha equally. The only difference between the Petitioners' share and that of the Objector is 0.03 Hectares. Timothy remained with the parents and must have taken good care of them. I do find that the Objector took his share and in his own letter acknowledged that the remaining plot belongs to his three brothers.

In the end, I do find that the Objection lacks merit and the same is dismissed. The confirmed grant issued on 13th July, 2011 shall continue to operate. Each party to meet his own costs.

Dated signed this **9th** day of **January, 2015**

Said J. Chitembwe

JUDGE

Dated, delivered and countersigned this **11th** day of **February, 2015**

Ruth Sitati

JUDGE