



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 217 OF 2003

**IN THE MATTER OF THE ESTATE OF RAMADHAN WESAMBA WALUTSESHE
(DECEASED)**

BETWEEN

ABDALLAH W. OKUSIMBA ADMINISTRATOR/RESPONDENT

VERSUS

ROSELLINE ANYONA CHITARI OBJECTOR/APPLICANT

RULING

Letters of Administration in the estate of Ramadhan Wesamba Walutseshe was granted to Abdallah Wesamba Okusimba on 25/6/2003. Thereafter, the said administrator filed a summons for confirmation of grant on 19/3/2008.

On the 12/1/2009, before the application for confirmation of grant was heard, the objector Rosaline Anyona Shitari filed an affidavit of protest against the confirmation of grant. The grounds of protest are as follows -

1. The letters of Administration intestate were granted fraudulently by concealment of material facts to this cause.
2. The petitioner has wilfully and/or knowingly omitted the objector's names and other beneficiaries to the estate.
3. The objector stands to suffer irreparable loss.

At the hearing of the Objection proceedings, the objector stated that she was the daughter-in-law of James Makokha who was now deceased. That the petitioner had sold the land of the said James Makokha. She stated that her husband was present in court but that she was the one who had made the protest. She confirmed that the deceased herein Ramadhan Wesamba was not her father-in-law. She did not state whether she was related to the deceased herein Ramadhan Wesamba.

In response, the administrator/respondent stated that the deceased herein was his father. The deceased was not the father of the husband of the objector. The land herein belonged to the deceased. He contended that, if there was a dispute as alleged by the objector, then the husband of the objector should have filed a case against him. That it was not right for the objector to file the objection herein.

These are Succession proceedings. In accordance with the provisions of the Law of Succession Act (Cap.160), and the rules made thereunder, objections in such proceedings can be raised by any person who has an interest in the estate of the deceased. An objector has to tender evidence or grounds that will

sustain that objection.

In the present case, the ground of objection is that the administrator had sold the land of the father-in-law of the objector. No connection has been established between the alleged sale of land by the administrator with the assets in the estate of the deceased herein. If indeed the administrator herein had sold land belonging to the father-in-law of the objector, that is a separate case that can be sustained directly against the administrator herein in person, not as an administrator of the deceased's estate herein.

In my view, the objection by the objector herein cannot be sustained in these Succession proceedings. The avenue available is to file separate proceedings against the administrator herein in his personal capacity, for the court's determination. As for the present application, I find that the same is not merited. It is misconceived and was filed in the wrong cause. The same is dismissed. The objector will pay minimal costs of the application to the administrator, which I assess as Kshs.2,000/=.

As for the summons for confirmation of grant, it is still for determination. I order that the same be served on all surviving beneficiaries and the purchaser disclosed who is Rodgers Juma Shitandi within 21 days from today. All those served will have 21 days from service to file their consents or otherwise to the confirmation of grant and proposed mode of distribution of assets. I will hereafter give a mention date to confirm service of the summons for confirmation of grant as directed above.

Dated and delivered at Kakamega this 8th day of May, 2014.

George Dulu

J U D G E