



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE AND ADMINISTRATION CAUSE NO.162 OF 2007

IN THE MATTER OF THE ESTATE OF WANJALA MACHOI MAMBWA

AND

EVERLINE ATIANG' WANYAMAPETITIONER

VERSUS

WILLIAM OSAYO SIROKO.....1ST OBJECTOR

ANASETH OUMA ADENYA2ND OBJECTOR

J U D G M E N T

1. The answer to these objection proceedings must be short. The Objectors own stated view of the issues for this Courts determination betrays the true nature of this dispute. The forum for its resolution is not a Probate and Administration Court.
2. In a notice dated 2nd October 2009 and filed on 24th May 2010, the Objectors framed the following as issues for this Court to determine:-
 1. **WHETHER** the Objectors bought and are entitled to a total of 2 acres out of Land Parcel No.BUKHAYO/MUNDIKA/1057, measuring 0.99 Hectare.
 2. **WHETHER** the Objectors are entitled to be registered as owners of the said 2 acres out of Land Parcel No.BUKHAYO/MUNDIKA/1057.
 3. **WHO** should pay the costs of these proceedings?
3. The tenor of the Objection proceedings, as I grasp it, was not so much whether the Petitioner who is a daughter in law of Deceased is entitled to apply for the Grant of Administration to the Estate but as to whether she was justified in excluding the Objectors interest from the Administration of the estate.
4. It is accepted that the Petitioner is the daughter in law of the deceased (see paragraph 2 of the Objectors petition by way of cross-application for a grant). Never mind that she may have been married to the now dead son after the death of the Deceased. This is because there is filed along with the presentation of this cause, consent by the Deceased's two surviving sons being Peter Oduor and David Were, to the making of the Grant to the Petitioner. I have little difficulty finding that she would have priority over the purported purchasers to the making of the grant.
5. Even if the Court was to accept the evidence of the Objectors Lock Stock and Barrel, the objection will not succeed. The highlight of that evidence is that:-

- I. The Objectors separately purchased 1 acre from the deceased.
 - II. The objectors have been in occupation thereof since 1977.
 - III. That in litigation commenced after the death of the Deceased, the objectors claim in the land was upheld by the Elders Tribunal and subsequently adopted as a judgment of the Court in Busia Land Dispute No.58 of 2006.
6. The Elders purported to preside over and determine a dispute involving the property of an Estate of a Deceased person which did not have a properly appointed Personal Representative. There could have been no proper Defendants. The Objectors cannot draw any benefit or credit from the outcome of those irregular procedures.
 7. As for this Court, it is not its business as a Probate and Administration Court to determine a land dispute between the Estate of the Deceased and third parties. That is what the framed issue was bespeaking of the Court. That dispute belongs elsewhere. The Objectors may have a good claim as purchasers or adverse possessors but they will have to stake it in the correct forum. Once this Court grants the letters to the Petitioner then she is clothed with legal capacity to be sued on behalf of the Estate.
 8. For reasons given, I dismiss the Objection proceedings with costs.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 15TH DAY OF MAY 2014.

IN THE PRESENCE OF:

KADENYICOURT CLERK

N/A.....FOR PETITIONER

MANWARI.....FOR 1ST OBJECTOR

MANWARI.....FOR 2ND OBJECTOR