

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 775 OF 1994

IN THE MATTER OF THE ESTATE OF ASHIMOLELA MADEGWA - (DECEASED)

BETWEEN

FESTUS M. ASHIMOLELA &

GODWIN A. IMBOVA PETITIONERS/RESPONDENTS

VERSUS

ZEMBETER AKALA SAMUEL OBJECTOR/APPLICANT

RULING

Confirmation of Grant of Letters of administration herein was done on 28th December, 2009 and certificate of confirmation of grant issued. The land asset **Isukha/Shitochi/1493** was to be shared equally between ZEMBETER AKALA SAMUEL and GODWIN ASHIMOLELA while LUFINA LUCHECHE ASHIMOLELA, the surviving spouse of the deceased, was to have a life interest. To protect the spouse, the court ordered that an inhibition against the said parcel of land be registered in order to prevent registration of any dealing in the said parcel.

The said LUFINA ASHIMOLELA died on 29th March 2000. Now, an application has been filed by Zembeter Akala Samuel on 26th June 2012 seeking the issuance of a fresh grant and removal of the life interest conferred on LUFINA ASHIMOLELA. It is stated in the application that LUFINA ASHIMOLELA died even before the certificate of confirmation of grant was registered in the Lands office.

This application has been opposed by the other beneficiary GODWIN IMBOVA. He stated that he now lived on the land. That he opposes equal distribution of the land because his grandfather – the owner of the estate had other children. In addition, somebody had already bought part of the land secretly through the applicant herein (ZEMBETER) who was his aunt married elsewhere.

I have considered the issues raised by both sides.

The request by the applicant is only to remove the life interest of LUFINA the widow of the deceased. LUFINA is dead. There is no contest on that. She was granted a life interest in the confirmed grant. In order that the property is freed from the life interest and inhibition, this court must make appropriate orders. GODWIN is opposing the application on account of other reasons. He is a grandson of the owner of the estate. The applicant is his aunt. He has neither filed a formal application, nor filed a formal objection. He merely raised issues in court on the hearing date.

In my view, his objections are misplaced. He is reopening distribution which has been determined already without making a formal application. That is not acceptable.

The present application is addressing consequential matters to the confirmed grant. A beneficiary with a life interest has died and there is need for this court to intervene, and issue appropriate orders to free the

asset from the expired interest of the widow. Both parties herein benefited from the estate. I find merits in the application. I allow the application and grant prayers 1 and 2. Costs in the cause.

Dated and delivered at Kakamega this 15th day of May, 2014

George Dulu

J U D G E