



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 409 OF 1988
IN THE MATTER OF THE ESTATE OF NABWAYO MUKANGAYI – DECEASED
BETWEEN
BENETA ALATSEKA MUKANGAYI PETITIONER
AND
LUBERO MUKANGAYI MUKOBOLE RESPONDENT
AND
PANDI ATIRA MUKANGAYI APPLICANT
RULING

The grant of letters of administration herein was initially confirmed on 19th October 1992. One (1) acre of parcel Butso/So/Shikoti/1111 was given to Lubero Mukangayi. A certificate of confirmed grant was issued.

Later, on 21st June 1995 a consent order was entered in court setting aside the above certificate of confirmation of grant. The consent was that the grant issued to Lubero Mukangayi Makobole on 25/9/1989 be confirmed on the following terms –

- i. That title No. Butso/So/Shikoti/1111 is to be pertitioned into 2 portions of one and four acres.
- ii. One acre portion to be registered in the joint names of Lubero Mukangayi Mukobole and Pandi Atira Mukangayi. The mother Berneda Atsenga Jospitate to have life interest on it.
- iii. The four acre portion to be registered in the name of Christopher Kibangwa Imbisi.

The applicant Lubero Pandi Atika Mukangayi, has now come to court through the present application dated 3rd August 2013 seeking the following orders –

- a. That pending the hearing and determination of this application a restriction be placed on title register of LR. Butso/So/Shikoti/5945.
- b. That the orders of 21.6.95 herein be given effect.
- c. That the registration of Lubero Mukangayi Mukkubole as owner of LR. Butso/So/Shikoti/5945 be cancelled and Pandi Atira Mukangayi be registered as sole absolute owner of the whole parcel.
- d. That the Deputy Registrar of this court be authorised to sign all relevant documents.
- e. That the applicant be substituted in the place of Beneta Alatseka Mukangayi.
- f. That this court do make such orders that shall meet ends of justice.

g. That costs be provided for.

The application was filed by Gabriel Fwaya advocate for the applicant. It was filed with a supporting affidavit sworn by the applicant, which annexed inter alia, a burial permit for Beneta Alatseka Mukangayi. Though the application was said to have been served, no response was filed.

On the hearing date, Mr. Fwaya learned counsel for the applicant made oral submissions.

I will say straight away that prayer (a) has been spent.

Since prayer (b) has not been opposed, same is hereby granted as orders of the court are meant to be put into effect.

I cannot grant prayer (c). Though the applicant says that he bought the respondent's portion of LR. Butso/Shikoti/5945, that is a separate contract and cannot be effected through these succession proceedings. The implementation of that contract of sale can be pursued through a separate civil suit.

Prayer (d) will be granted as, if the administrator, who is the respondent has failed or neglected to carry out his function, then there is sufficient ground for the Deputy Registrar putting into effect the orders of this court. Prayer (d) is therefore hereby granted.

Prayer (e) cannot be granted. The applicant cannot be substituted for the life interest of Beneta Alatseka Mukangayi. However, since the said Beneta has died, I order that her life interest has elapsed and ceased to exist. A fresh certificate of confirmed grant will issue excluding the life interest of Beneta Alatseka Mukangayi.

There are no further or other orders to be made under prayer (f).

Lastly, I make no orders as to costs, as this appears to be a family matter and the application was not contested.

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

George Dulu

J U D G E