



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO.44 OF 2001

DOMINIC IMOO OTWANEOBJECTOR

VERSUS

AFRICANUS IKAPEL OTWANE KIDERAAPPLICANT

RULING

1. A Grant of Letters of Administration Intestate to the Estate of Peter Otwane (the **Deceased**) was made to Africanus Ikapel Otwane Kidera (the **Applicant**) on 4th June 2002. Through summons dated 31st March 2006 the Applicant had moved Court for confirmation of that Grant.
2. Dominic Imoo Otwane (The **Protestor**) objects to the proposed confirmation of Grant and swore an Affidavit in Protest on 17th January 2014. That protest would be pursuant to Rule 40(b) of The Probate and Administration Rules.
3. The Applicant never responded to that protest nor did he attend the hearing notwithstanding that he had been duly served with a hearing notice.
4. In his Affidavit in protest, the Protest asserts that he is the biological son of the Deceased. It is his wish that each of the children of the Deceased get an equal share of 4.8 hectares. He protests that the Applicant proposed to give him land parcel South Teso/Amukura/2884 measuring 0.70 when in fact he is residing on South Teso/Amukura/1445 (perhaps South Teso/Amukura/445?). He also makes the point that South Teso/Amukura/2884 had already been given to one Andrew Apadet by the Deceased.
5. The Affidavit evidence of the Protest is not contested and I will take it that the Applicant is indeed a son of the Deceased. Reading the Applicants Affidavit in support of the summons for confirmation, one quickly notices that the share of the Protester is the smallest in acreage; and by far. It is proposed that he gets 0.70 hectares while his brothers shares are as follows:-

a. Jacob Etori - 10 hectares

South Teso/Amukura/438 & 445

b. Nicholas Oita - 10 hectares

South Teso/Amukura/445

c. Francis Ejon - 10 hectares

South Teso/Amukura/438

d. Fred Ipa - 6 hectares

South Teso/Amukura/445

e. Africanus Ikapel Otwane - 7.35 hectares

South Teso/Amukura/1563,590 & 2853

On the face of it the proposed distribution is patently unfair to the Protestor.

7) Rule 41(2) of The Probate & Administration Rules empowers the Court, upon hearing an application for confirmation and a Protest, to refer back the Application to the Applicant for further consideration. I choose to refer the Application back to the Applicant to make a fresh proposal on distribution in which he shall give the Protestor an equitable share of the Deceased Estate bearing in mind that each child of the Deceased would, normally, be entitled to an equal share of his/her father's Estate. The Court takes this course because the proposed shares of some of the other beneficiaries appear to be on more than one parcel of land and for this Court to make a Court order for redistribution without knowledge of the situation of the ground may result in unnecessary hardship to the beneficiaries.

8) The Applicant shall file an affidavit with the new proposal on distribution within 30 (thirty) days of this ruling to enable this Court make its final orders.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 17TH DAY OF JULY 2014.

IN THE PRESENCE OF:

KADENYICOURT CLERK

PROTESTOR PRESENT IN PERSON

N/A FOR APPLICANT