



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 502 OF 2007

IN THE MATTER OF THE ESTATE OF ANGOLI CHIVOLO DECEASED

AND

MUSA ANGANYO ANGOLI PETITIONER

V E R S U S

FLORENCE NYAKOA MUYEKHO OBJECTOR

R U L I N G

The late **ANGOLI CHIVOLO** died on the 14.3.1974. The petitioner **MUSA ONGANYO ANGOLI** filed this succession cause and was issued with a grant on the 30.11.2007. The objector herein **FLORENCE NYAKOA MUYEKHO** filed summons for the revocation of the grant dated 23.11.2010. The objector is the deceased's daughter.

The matter proceeded by way of oral evidence. The objector testified that the deceased was her father. He had two wives. The first wife by the name **SHICHETE** had only one child, **MUSA ONYANGO** who is the petitioner. The second wife **TERESINA** had four daughters and one son. Two daughters are alive namely the Petitioner and her sister **AGATHA**. It is her evidence that her father died in an accident and had not distributed his estate. He left two plots namely **KAKAMEGA/SHAMBERERE/446** measuring 4 acres and **992** measuring 7 acres. Her brother from the same mother by the name **MWANZI** is deceased but left his son **RASTUS**. Her proposal is to distribute the estate as follows:-

(a) **MUSA ONGANYO ANGOLI**

L.R. KAKAMEGA/SHAMBERERE/446 - 0.6 HA.

L.R. KAKAMEGA/SHAMBERERE/992 - 1.4 HA.

(b) **FLORENCE NYAKOA MUYEKHO**

L.R. KAKAMEGA/SHAMBERERE/446 - 0.2 HA.

L.R. KAKAMEGA/SHAMBERERE/992 - 1.4 HA.

(c) **RASTUS ANGOLI**

L.R. KAKAMEGA/SHAMBERERE/446 - 0.8 HA.

She further testified that she was not involved when the succession was filed. She tried to have the matter reconciled at home but Musa chased her away. Musa and Rasters have sold part of the land.

The petitioner Musa Onganyo Angoli testified that the deceased was his father. His father had two wives. His mother was the first wife and she had four daughters and himself as the only son. The second wife Teresina had four daughters and one son. His step brother is deceased and left his son Rasters Angolo and a daughter by the name **REYE** who is married. It is his evidence that his father had divided his land equally between the petitioner and his step brother **Mwanzi**. He got two acres out of plot number 446 and 3 ½ acres out of plot number 992. The objector is married and has no child. He has over 15 children. Rasters has 4 sons. The land is already divided and the objector sold part of the land. At one time his father was sick and he called his brothers to divide the land. The petitioner's mode of distribution is as follows:-

MUSA ONGANYO ANGOLI

L.R. KAKAMEGA/SHAMBERERE/446 - 0.8 HA.

L.R. KAKAMEGA/SHAMBERERE/992 - 1.4 HA.

RASTERS ANGOLI & FLORENCE NYAKOA

L.R. KAKAMEGA/SHAMBERERE/446 - 0.8 HA.

L.R. KAKAMEGA/SHAMBERERE/992 - 1.4 HA.

DW2 GIDEON JEREMANI MURUNGA testified that he is the chairman of the clan where the deceased belonged. His evidence is that the deceased had two wives. The first wife by the name Shichete had only one son Musa, the petitioner. The second house had one son by the name Mwanzi and four daughters. Two daughters are alive and these are the objector one Agatha. They are all married. The objector sold part of the land. The deceased had divided his land between his two sons equally. It is his evidence that the objector should not get any land. **DW3 RASTUS ANGOLI** testified that the deceased was his grandfather. His father is **Charles Mwanzi** who is deceased. Musa is his uncle while the objector is his aunty. According to him he did succession with his uncle Musa and they divided the two properties equally. He was living in plot number **446** but the objector sold the land. He has four children and a wife. The two plots are not located next to each other and are about 2 kilometers apart. He only sold 0.1 acres out of plot number 446. Musa has not sold any land. His aunty should not get any land. His proposed mode of distribution is similar to that of his uncle.

The evidence shows that the main issue for determination is whether Florence should inherit the deceased's estate and how the estate should be distributed. From the evidence on record it is established that the first wife had only one son who is the petitioner. The petitioner's contention that he has four sisters who are alive is disproved by his own witness DW2 who confirmed to the court that the first wife had only one child. Under the Law of Succession Cap 160 there is no difference between a male and female child. All are entitled to inherit. Under **section 29** all the children of the deceased are classified as dependants. The objector herein is the deceased's daughter and is entitled to inherit her father's estate. The next issue is the distribution of the estate. The petitioner and Rastus would like to share the two plots equally and exclude the objector. According to the objector she would like to give her step brother Musa 0.6 Hectares out of plot number 446 and half of plot number 992. She would also like to take 0.2 hectares out of plot number 446 and half of plot number 992. She would like to give Rastus 0.8 hectares out of plot number 446.

I have considered the proposed distribution by both parties and take into account that Agatha who is still alive has not asked for any property. I will distribute the estate as follows:

KAKAMEGA/SHAMBERERE/446

<i>Musa Ongayo Angoli</i>	-	<i>0.7 Ha.</i>
<i>Rastus Ongoli</i>	-	<i>0.7 Ha.</i>
<i>Florence Nyakoa Muyekho</i>	-	<i>0.2 Ha.</i>
<u>KAKAMEGA/SHAMBERERE/992</u>		
<i>Musa Ongayo Angoli</i>	-	<i>1.2 Ha.</i>
<i>Rastus Ongoli</i>	-	<i>1.2 Ha.</i>
<i>Florence Nyakoa Muyekho</i>	-	<i>0.4 Ha.</i>

Florence shall hold her share for her own benefit and for the benefit of her living sister Agatha. Rastus shall also hold his share for his own benefit and for the benefit of his sister Belia. Each party shall meet his/her own costs.

Delivered, dated and signed at Kakamega this 3rd day of July 2014

SAID J. CHITEMBWE

J U D G E