



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 212 OF 1991**

**IN THE MATTER OF THE ESTATE OF KEZIA LIHEEA OBOGE ..... DECEASED**

**ALBERT ANYIRA GIRAGWA ..... PETITIONER**

**V E R S U S**

**HELLEN OBABU OBOGE ..... OBJECTOR**

**R U L I N G**

The late **KEZIA LIHEEA OBOGE** died on the 2.8.1982. The petitioner herein applied for letters of administration intestate and was issued with a grant on the 18.3.1992. The grant was confirmed on the 22.3.1993. The petitioner was registered as the proprietor of plot number **KAKAMEGA/MASANA/104**. In May 1995 an application for the revocation of grant was made by one **JAPHETH OBAGE OBOGE** indicating that the petitioner had no relationship with the deceased yet he claimed to have been the only son. The petitioner was only a purchaser and Japheth Oboge was the only purchaser.

On 20.11.2006 Hellen Obabu Oboge applied to substitute her late husband Japheth Obage Oboge. The grant was revoked by consent and the two parties became joint administrators. The land title deed issued to the petitioner was revoked and reverted to the names of the deceased. The consent was recorded on the 27.10.2010. Parties also agreed that the suit land be surveyed to find out the status on the ground. A surveyor from Vihiga district visited the land on the 15.3.2011 and filed a report dated 25.3.2011. Hellen Obabu Oboge filed an application dated 4.4.2011 for the confirmation of the grant and her proposed mode of distribution was as per the findings of the surveyor. The petitioner filed an affidavit of protest contending that the land was to be divided into two equal shares.

Counsel for both parties, agreed to determine the dispute by way of written submissions. Counsels agreed that the only issue for determination is the distribution of the suit property. According to the applicant Hellen Obabu Oboge the deceased was her mother in-law. She has been residing on the suit land and occupying a portion measuring 0.648 hectares while the petitioner is occupying 0.328 hectares. She would like the grant to be confirmed on those lines. According to the petitioner the deceased sold the land to his late father **REUBEN KIRAGWA**. However no sale agreement was annexed. According to the petitioner the applicant only went to the land in 1995 when the petitioner's father died. The matter was heard at the Vihiga Land Disputes Tribunal whose decision was adopted by the Vihiga SRM's court vide Misc. Application No. 24 of 2000. The court ordered that the deceased's estate be divided into two portions. According to the petitioner the word two portions meant two equal shares.

I have seen the decree of the Resident Magistrate at Vihiga and the wording is two portions and not two equal portions. The distribution of this estate shall not be based on the decision of the Vihiga Court as that decision was vacated by consent. Since there was objection proceedings commenced before the High Court, the petitioner should rely on the decree of the lower court. It is now the responsibility of this court to distribute the estate in the manner it deems fit. There is no evidence as to the size of the plot bought by the petitioner's father. The surveyor visited the land and prepared a sketch of the situation on the ground. The sketch shows that the petitioner is occupying 0.328 hectares while the applicant is occupying 0.648 hectares. I do find that there is no need to disturb that arrangement. The petitioner has not shown why he has not been occupying more land than what he has. It is my finding that parties have been living like that for some time and that arrangement should be left intact.

In the end I do order that the deceased's estate comprising plot number **KAKAMEGA/MASANA/1304** be distributed as follows:-

1. Hellen Obabu Oboge ..... 0.648 Ha.
2. Albert Anyila Giragwa ..... 0.328 Ha.

There shall be no orders as to costs.

**Delivered, dated and signed at Kakamega this 8<sup>th</sup> day of October 2014**

**SAID J. CHITEMBWE**

**J U D G E**