

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Sucession Cause No. 362 Of 2005

IN THE MATTER OF THE ESTATE OF J O M ... DECEASED

AND

B M R PETITIONER

VERSUS

S O O OBJECTOR

J U D G M E N T

The late **J O M** died on 14.5.1994. **M A O**, his son was issued with a grant on the 5.8.1998. **B M R** who is the mother of **M** seems to have taken over the administration of the estate after her son **M** passed on. She was issued with a certificate of confirmed grant on the 29.5.2007. **S O O** raised objection and sought to have the confirmed grant revoked. **A A** was also enjoined in the proceedings. The matter proceeded to full hearing.

S O O testified that the deceased was his uncle. He was a brother to his father. **B** was the wife of the deceased but she divorced in 1959 and has since remarried and has children from her second marriage. The deceased had one child with **B** by the names **M A**. **M** died and left no child. Before his death **M** had sold the land to **A O**. This was after the death of **J O**. He denied knowing **A A**. He further denied that **M** had no wife by the name **F**. The deceased left a plot that was sold by **M**.

A A testified that the deceased was his cousin. The deceased's father was the older brother to his father. The deceased married **B M R** and had one child by the name **M** who is deceased. **B** is remarried and lives with her husband. **M** is deceased but left three children namely **J O**, **Y O** and **A M**. **Y** was in court and lives with **B**. The deceased owned plot number **[particulars withheld] 263**. He would like the land to be inherited by the children of **M**. **M** had a wife by the name **F** and she left the homestead. The land was never sold. The alleged purchaser **A** sued **B** in Kakamega CMCC No. 55 of 2007 claiming the land but she lost. He would like to hold the land in trust until **M** children become of age. **A** caused him to be charged before the Butere court in Criminal Case No. 319 of 2012 but he was acquitted. **F** was a Luo lady and she brought the children and went away.

B M testified that the late **J** was her first husband and they had one child, **M A**. **M** died in 2000 and left three children. She petitioned the court for letters of administration. No one lives on the plot. She would like her brother in-law **A A** to take over the land on behalf of the grandchildren. She knows the objector **S O**. She denied that **A** bought the land. She only leased the land. She had a court case with **A** but **A** lost and was told to move out.

Counsel for the objector **S** in her written submissions contends that there is no evidence that **M** left children. No birth certificates or letter from the area chief were produced. **B** remarried and is not entitled to inherit. According to her **S** should be the rightful person to take over the land.

The evidence shows that the deceased left plot number **[particulars withheld] 263** measuring 1.8 acres. The evidence that **A K O** bought the suit land has not been proved. It is clear that she alleged to have bought the land and filed Kakamega CMCC No. 55 of 2007 but the suit was dismissed after a preliminary objection was raised. **A** herself never testified. Although **S** testified that there was a sale agreement, the same was not produced. I do find that the land was not sold to **A**.

The next issue is whether M left children and who should inherit the land. It is clear that B got remarried and she is not claiming the land. A is not also claiming the land. There is no evidence that the three children mentioned by A are not the children of M. It was alleged that these children are B grandchildren from her second marriage. There is concrete evidence to that evidence. According to the affidavit of B sworn on 11.6.2012 and A sworn on 12.6.2012 M left three children namely **NM (15 years), JO (13 years) and YO (12 years)**. S himself testified that M used to marry women and later divorce them. It is possible that one of the wives of M was F and they had the children together. I do note that the intention of S is not to take care of the land but to pass it over to A. I do find that for the interest of justice, the best person to take care of the land is **A AW** who should hold it in trust for the benefit of M children. I am satisfied that M left children and they are the beneficiaries of the deceased.

In the end I do find that the objection by S is not merited and the same is hereby dismissed. The grant herein is hereby revoked and a fresh grant shall be issued to AAW. The deceased's estate shall be distributed as follows:

PLOT NUMBER – [particulars withheld] 263 AAW to hold in trust for NM, JO and YO.

A shall transfer the property to the children when the young child Y attains the age of 18 years old. Each party shall meet his/her own costs.

Delivered, dated and signed at Kakamega this 15th day of October 2014

SAID J. CHITEMBWE

JUDGE