



In re Estate of Andawa Soita alias Wandawa Soita (Deceased) (Succession Cause 793 of 2015) [2025] KEHC 6193 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 6193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 793 OF 2015**

S MBUNGI, J

APRIL 30, 2025

**IN THE MATTER OF THE ESTATE OF ANDAWA
SOITA ALIAS WANDAWA SOITA--- DECEASED.**

BETWEEN

JOASH SOITA ANDAWA PETITIONER

AND

JOSEPH ONYANGO ROBERT RESPONDENT

RULING

1. The matter refers to the estate of Andawa Soita alias Wandawa Soita (deceased), who died on 13th March 2008, survived by two sons, John Soita and Geoffrey Masiache, and grandsons, sons to John Soita; Joash Soita andana (petitioner), Jesse Burudi Soita, Joshua Andawa Soita, and Jafred Soitah.
2. On 3rd June 2016, the deceased's grandson, Joash Soita Andawa, applied for grants of letters of administration, which were issued on 2nd July 2018.
3. On 3rd August 2022, the court revoked the said grant on failure by the petitioner to have the grant confirmed. On 24th January 2022, the petitioner prayed for the order revoking the grant to be set aside and the grant be reinstated saying that the delay in filing for confirmation of the grant was because the deceased parcel of land Kakamega/matsakha/764 was fraudulently subdivided creating parcel land numbers Kakamega/Matsakha/1559,1560,1561 and 1562. He instituted the Butali SPMCC MCL& E case number 32 of 2019, where he sought the cancellation of the illegally obtained title deeds and registration to revert to the deceased's name.
4. He filed summons for confirmation of the grant on 16th March 2023.



5. On 17th May 2023, Joseph Onyango Robert filed an affidavit of protest claiming that he has been in occupation of the land since 8/4/2001. He bought a portion of land measuring 2.0 acres from the deceased Andawa Soita at a consideration of Kshs. 150,000/=
6. According to the protestor, the deceased approached him for money to subdivide the land, which was Kshs. 37,500/= and he gave him the money in exchange for 0.5 acres of the land parcel North/Kabras/Matsakha/764 to add to the already purchased 2 acres .
7. On 29/5/2004, the deceased sold to him an additional one acre from the parcel North/Kabras/Matsakha/764. He paid Kshs 80,000/=
8. The deceased and his sons appeared before the Land Control Board for consent and the deceased signed all the forms, including mutation, which necessitated the subdivision.
9. The deceased died before the surveyor processed the title deeds the family appointed Hezron Masiachi to finalize the process which he did.
10. He avers that the surveyor did not follow the right procedure, and the new numbers were cancelled and new title deeds obtained.
11. He further avers that he lived well with the deceased family, and it only the grandsons who now claim that he was entitled to 2 acres as opposed to the 3 ½ acres of land.
12. He protested against the mode of distribution as alleged by the petitioner.
13. The deceased daughter-in-law, Florence Kayeke Kibachi, filed an affidavit of protest and claimed that the deceased had sold 3.5 acres to the objector, and the rest was left to be shared among his surviving beneficiaries, and that the deceased died before the conveyancing process was completed.
14. The application was canvassed by way of written submissions.

Analysis & Determination

15. I have considered the applications, the responses thereto, and the petitioner's submissions.
16. It is clear that the issue is whether the deceased sold 3 ½ acres or 2 acres to the Respondent.
17. In view of the court's order issued by Judge P. J Otieno on 20.12.2023 it appears that the 2 acres is not in dispute what is in dispute is 1 ½ acres.
18. The question as to whether there was a valid sale of the 1 ½ acres or not is not a question which can be answered by this court. It is a purview of Environment and Land Court. This court does not have jurisdiction, its jurisdiction is limited to distributing the free property of a deceased.
19. It is upon the parties to elect on how to proceed on the uncontested 2 acres. They can choose to have a partial confirmation of the grant or choose to await determination on the validity of the alleged sale of 1 ½ Acres.
20. Mention on 17.7.2025 for further directions.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2025

S.N MBUNGI

JUDGE



In the presence of :

Court Assistant – Albright Sunguti

Applicant present in person.

Advocates absent.

