



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO.1040 OF 2012

IN THE MATTER OF THE ESTATE OF WILLIAM MALAGE LIDOLI DECEASED

SAFFAN MUSA PETITIONER

VERSUS

SAMUEL MALANDE PROTESTOR

JUDGMENT

On 27th September, 2012 *Saffan Musa*, (the petitioner), petitioned this court for grant of letters of administration intestate for the estate of his late father *William Malage Ludoli*, who died on 8th November, 2011. In the petition, the petitioner indicated that his late father left behind the following people; *Saffan Musa* – son, *Samuel Malade* – son and *Davidson Malage* – grandson. He also obtained a letter from the Assistant Chief of *Bulovi sub-location* dated 26th September, 2012 which also indicated that the deceased had left behind the people disclosed by the petitioner as well as the same relationship to the deceased.

A grant of letters of administration intestate was then issued to the petitioner on 29th July 2013 as the sole administrator of the deceased's estate, and/or 11th February 2015, the petitioner applied for confirmation of the said grant and sought to have the deceased's estate namely *Parcel No. South Kabras/Chesero/1023* measuring approximately 4.80 HA (11.86 acres) distributed such that the petitioner, Saffan Musa was to get five (5) acres, Samuel Malande five (5) acres and Davidson Malage one (1) acre. Samuel Malande (the protestor) then filed a protest on 27th March, 2015 protesting to the mode of distribution suggested by the petitioner. He objected to Davidson Malage, a grandson to the deceased, getting a share from the deceased's estate. He wanted the estate shared equally between the petitioner and himself, they being the only surviving beneficiaries of the deceased.

On 13th May 2015, the court directed that the protest be heard by way of oral evidence. On 10th February 2015, the matter came up for hearing when the protest was heard. *Samuel Malande* testified that his late father left behind two sons, namely the petitioner and himself. He told the court that Davidson Malage is a son to the petitioner and therefore a grandson to the deceased and was thus not entitled to inherit his grant father's estate. According to the protestor, Davidson can only benefit from his father's (petitioner) share. He felt that the petitioner was not being fair in trying to have his son benefit from their father's estate when he was not entitled to do so. He asked the court to intervene and order that the estate be shared equally between the protestor and the petitioner.

The petitioner testified and told the court that the deceased left behind the protestor and himself as the

only surviving children. He also told the court that Davidson was his own son and therefore grandson to the deceased. He also admitted that he had included his own son Davidson as a beneficiary to the estate of the deceased but said that he did so because the deceased had given him (Davidson) one (1) acre in 2009. He said he was sharing out the land so that him and the protestor get five (five) (5) acres each while Davidson gets one (1) acre as their father had wanted. He asked the court to dismiss the protest.

I have considered this matter, the evidence tendered in court and perused the documents on record. It is clear that the deceased died intestate leaving behind the petitioner and protestor as the only surviving beneficiaries. He also left behind Parcel No. South Kabras/Chesero/1023 as the only property comprising his estate. That parcel measures approximately 4.80 HA (about 11.86 acres). The petitioner has sought to include his own son Davidson Malage as a beneficiary of the deceased's estate saying that the deceased had given the grandson one (1) acre in about 2009 and the protestor has objected saying that the grandson is not entitled and also that it is not true that their father had given one (1) acre to the said Davidson.

The petitioner has not called any other independent evidence to prove that indeed his father gave one (1) are to Davidson. It is also highly unlikely that the deceased could have done so without involving the protestor, his other surviving son. The petitioner and protestor are step-brothers and they are entitled to share the estate equally. Davidson being a grandson, is not, in law, entitled to inherit his grandfather's estate during the lifetime of his own father who is also included as a beneficiary of the same estate. If this were to be allowed, the petitioner and his mother's house for that matter, would have an advantage over the protestor by getting a bigger share of the estate. I therefore do not agree with the petitioner that Davidson Mugale was given one (1) acre by the deceased and that he should benefit from the estate of the deceased. I do not believe him.

On the other hand I believe the testimony of the protestor and agree with him that Davidson being a grandson to the deceased is not entitled to inherit his grandfather's estate. Davidson's father is a beneficiary and it will be unfair for him and his father to benefit from the deceased's estate. The petitioner and protestor are the only surviving beneficiaries of the deceased's estate and only them should benefit from the estate. I therefore allow the protest and order that the estate of the deceased be shared equally between the two.

I observed during the hearing of this protest that the petitioner was abit hostile to the protestor and in order to forestall any further animosity, I have to make orders that will be for the benefit of the two. Having allowed the protest, I hereby make the following orders:

- 1.) *The grant of letters of administration intestate issued to Saffan Musa on 29th July 2013 is hereby revoked.*
- 2.) *A grant of letters of administration intestate for the estate of William Malage Lidoli be issued in the joint names of Saffan Musa and Samuel Malande and the same is hereby confirmed.*
- 3.) *The estate of the deceased William Malage Lidoli namely Parcel No. South Kabras/Chesero/1023 be share equally between Saffan Musa and Samuel Malande.*
- 4.) *A certificate of confirmation of grant be issued as above.*
- 5.) *Each party to bear their own costs.*

Dated at Kakamega this 26th day of January, 2016.

E. C. MWITA

JUDGE



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