



REPUBLIC OF KENYA



**In re Petro Oyuga Ogemba alias Oyuga Ogemba (Deceased) (Succession Cause 1209 of 2013) [2023] KEHC 1451 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1451 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
SUCCESSION CAUSE 1209 OF 2013**

**FA OCHIENG & , JJ**

**FEBRUARY 27, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE  
PETRO OYUGA OGEMBA ALIAS OYUGA OGEMBA**

**(DECEASED)**

**IN THE MATTER OF ANNULMENT AND CANCELLATION OF GRANT  
IN THE MATTER OF AN APPLICATION BY: JECKONIA ADUMA OMINO**

**BETWEEN**

**JECKONIA ADUMA OMINO ..... APPLICANT**

**AND**

**AGNETA WANJERE OYUGA ..... OBJECTOR**

**AND**

**AGNETA WANJERE OYUGA ..... RESPONDENT**

**AND**

**JECKONIA ADUMA OMINO ..... PETITIONER**

**RULING**

1. The matter before me is the summons for confirmation of the grant dated September 30, 2019.
2. It is common ground that the only asset left behind by the deceased was LR No South Gem/Rera/878.
3. From the Certificate of Official Search dated January 22, 2019
4. In an affidavit sworn on January 31, 2019, Jeckonia Aduma Omino deponed thus;



22. That the 2 families of Mbulo Ogemba and Petro Oyuga Ogemba are entitled to equal share of the family land, and the confirmed grant can be amended to reflect that, since at the time of confirmation this was not reflected.”
5. On September 30, 2019 Jeckonia Aduma Omino swore an affidavit in support of the summons for confirmation of grant. In that affidavit he asked the court to distribute the land as follows;

Home One

- a. Agneta Wanjere Oyuga
- b. James Nyamare Oyuga
- c. Sophia Ochieng
- d. Meresia Mbulo
- e. Francis Otieno”

They would share equally the part which the deponent designated as “Part A”, which comprised 9.9 Hectares, (or 24.75 acres).

The deponent went on to suggest thus:

Home Two

- f. Jeckonia Aduma Omino
- g. Gilbert Odalo Omino
- h. Meshack Okoth Omino
- i. Henry Ochieng Omino
- j. Solomon O. Omino
- k. Domnic Bolo Ogemba”

6. They would share “Part B” which comprised 3.75 Hectares, (or 8.75 acres).
7. I note that the persons named as members of “Home Two” were the Petitioner, 4 grandsons and 1 great grandson, of the deceased.
8. Meanwhile, those cited as members of “House One” include a widow, 2 sons and 2 daughters-in-law of the deceased.
9. By her affidavit sworn on October 15, 2021, Peres Akinyi Omino deponed that she was the widow of Paul Omino Mbulo, who is a son to Mbulo Ogemba. Her said father-in-law was the elder brother of Oyuga Ogemba.
10. It was her testimony that the families of the 2 brothers lived harmoniously on the parcel of land in issue, even though the title thereto was registered in the name of Oyuga Ogemba.
11. I have found no contestation to the deposition by Peres Akinyi Omino. If anything, the reality prevailing on the ground appears to support her.



12. Solomon Omino swore an affidavit of protest on October 15, 2020. In his said affidavit, he stated that the land in question;
- ... accommodates two families, Oyugas family and his elder brother Mbulo Ogemba’s family.”
- He went on to depone thus;
5. That Mbulo Ogemba’s family have equal rights with Oyuga Ogemba’s family to inherit the land parcel No South Gem/RERA/878.
6. That Mbulo Ogemba’s family should be given half of the 13.4 HA; and that is 6.7 HA for each family.”
13. When canvassing the summons for confirmation of the grant, the petitioner (Jeckonia Aduma Omino) proposed that “Home One” should get 9.9 Hectares, whilst “Home Two” should get 3.75 Hectares.
14. In answer to the application, the objector reiterated that the petitioner was not a beneficiary to the estate of the late Oyuga Ogemba.
15. Nonetheless, she conceded that the petitioner is a son of Paul Omino, who was a brother of the deceased.
16. I find that the objector did, by the said concession, actually support the case which the petitioner had put forward all through. He had filed a citation, in which he acknowledged that the objector ranked in priority over him, in matters concerned with the estate of the deceased.
17. The objector submitted that the Grant ought to be revoked because the petitioner was not a legitimate beneficiary to the estate of the deceased.
18. At this point, I wish to make it clear that the objector has not filed an application for the revocation of the grant.
19. In any event, as the petitioner had only filed the petition after the citees had failed to move the court for the grant of letters of administration, I find that the petitioner had followed the proper procedure when he sought the grant herein.
20. In the case of *Charles Njiraini Warui & Another vs Grace Wawira* [2017] eKLR the Court declined the summons for confirmation of grant because;
- a. Some beneficiaries had been omitted from the list;
- b. The objector had not been involved in the process, and her consent had not been obtained;
- c. The administrators had not filed any deeds of renunciation by the children of the deceased, who had not been provided for.
21. In the said circumstances, the court concluded that the application for confirmation of the grant was not properly before the court. The court directed as follows;
22. I order that the proposed confirmation of grant shall be postponed for a period of sixty (60) days. The administrators shall file a fresh application of confirmation of grant, identifying the respective identities and shares of all persons beneficially entitled to a share of the estate of the deceased. All the persons beneficially entitled to a share of the estate shall be provided for, unless they have waived or renounced their rights thereto.”



23. In this case, I find that the petitioner appears to have listed all the persons who are beneficially entitled to a share of the estate.
24. I further find that the petitioner appears to have proposed an equitable formula for the distribution of the estate.
25. I so hold based on my finding, *inter alia*, that the deceased had been registered as the proprietor of the suit property, but he held the said parcel of land in trust for his family and the family of his late brother, Mbulo Ogemba.
26. Regrettably, the respondent did not place before this court, her proposed mode of distribution. Instead, the objector asked the court to appoint her as the administrator to the estate, so that she could thereafter make a proposal for the distribution of the estate.
27. I hold the considered view that the objector, (or anybody else) does not have to be the administrator to the estate of the deceased before she or he can give a proposal for the distribution of the estate.
28. Once the petitioner had put forward the proposed mode of distribution, any person claiming a beneficial interest, had a right to make an alternative proposal.
29. The objector has squandered her opportunity, by failing to place a proposal before the court.
30. Secondly, I hold the view that the petitioner's proposal was equitable. In the circumstances, I find no reason to warrant any further delay in this matter. Accordingly, the summons for confirmation of grant is granted, and the estate shall be distributed as proposed by the petitioner.
31. As regards costs of the application, each party will meet their own: I so order because this is a dispute within the family, and the said family literally reside together on one parcel of land.

**DATED, SIGNED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**FRED A. OCHIENG**

.....

**JUDGE**

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

