



REPUBLIC OF KENYA



**In re Estate of Sofia Airo Omondi (Deceased) (Succession Cause
1148 of 2015) [2023] KEHC 3000 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3000 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 1148 OF 2015
RE ABURILI, J
MARCH 24, 2023**

RULING

1. By an amended summons for rectification of grant and certificate of confirmation of grant dated November 28, 2022, the Applicant/Petitioner Joanes Omondi Weje seeks that the certificate of confirmation of grant made on November 28, 2018 be amended and rectified pursuant to Rule 43(1) of the *Probate and Administration Rules* to reflect the true properties of the deceased Sophia Airo Omondi as follows:
 - a. That the certificate of confirmation do include Land Parcel No. Kisumu/Songhor/943 and that Land Parcels Nos Kisumu/Songhor/941 and Kisumu/Songhor/946 which were erroneously included as belonging to the deceased's estate be removed.
2. In the supporting affidavit sworn on November 28, 2022, there is a proposal on distribution of the said properties to be shared in the proportions of 0.50 Ha and 0.30 *ba* in favour of Vitalis Odhiambo Weje and Elijah Bonyo Owuor respectively.
3. The Applicant administrator also annexed a consent signed and dated November 28, 2022 by Vitalis Odhiambo Omondi, Daniel Omondi Otieno, Norah Atieno Ayiecho and Dinah Atieno Omondi, consenting to the amended mode of distribution of the estate as proposed to be rectified.
4. I have perused the file herein. I find that parcel No. Kisumu/Songhor/946 is registered in favour of Fredrick George Odhiambo Okwiri while Kisumu/Songhor/948 is in favour of Benson Odongo Okwiri. On the other hand, Land Parcel Kisumu/Songhor/941 is registered in the name of Sophia Airo Omondi as per the search Certificate dated August 2, 2018.
5. Parcel No. 941 above is the only parcel that was listed as the asset of the deceased Sophia Airo Omondi during the filing of the Petition herein although as at August 2, 2018, Parcel No. 946 was equally registered in the deceased's name in the confirmed grant issued on April 25, 2017. Only parcel No. 941 was listed to be distributed to the Petitioner herein but later the Petitioner sought to rectify the grant as confirmed to include parcel 946 vide summons dated August 6, 2018 and in the rectified certificate



- of confirmation dated November 28, 2018, both parcels 946 and 941 were listed for distribution with children of the Petitioner and the deceased being given parcel No. 941 to share while the petitioner remained with parcel 946.
6. The Petitioner now claims that the land parcel No. 946 and 941 were fraudulently registered in the names of other persons now named in the titles and that only parcel No. 943 is available for distribution.
 7. The question is, how many times shall this court be given half-baked information on what properties form part of the estate of the deceased? Since the Petitioner is the administrator of the deceased's estate, if, during and in the course of his administration of the said estate, someone else fraudulently acquired titles to the stated parcels Nos. 946 and 941, then it is the duty of the Administrator to file suits before the Environment and Land Court to recover the said parcels as this court being a succession court cannot make orders regarding ownership, title to, use or occupation of land.
 8. On this, the court before me advised him on July 25, 2022. However, I observe that the Petitioner had omitted Parcel No 943 from the list of assets of the estate.
 9. The above notwithstanding, I observe that the Petitioner has introduced a new person as a beneficiary of the estate of the deceased and allocated him 0.30 Ha of parcel No. 943 without disclosing who this person Elijah Bonyo Owuor is, to benefit with Vitalis Odhiambo Omondi, who was initially introduced as the son to the deceased together with Daniel Oduol Omondi and Paul Omolo Weje.
 10. I find the Petitioner is not forthright in the administration of the estate of the deceased and is abusing this court's process.
 11. I decline to allow the amended summons for rectification of grant dated November 28, 2022. I dismiss it.
 12. Consequently, as it appears that the Petitioner commenced these proceedings on a wrong footing by omitting assets of the deceased and is bringing them on board piecemeal and named himself alone in P&A 5 as the person surviving the deceased yet he is using this court's orders to distribute the estate to persons who were not listed in the Petition, I find that the grant issued to the Petitioner herein Joanes Omondi Weje on March 29, 2016 was materially defective for non-disclosure of material facts and the subsequent certificates of confirmation and rectification were made or issued Per incuriam . They are hereby revoked, annulled and set aside.
 13. The Petitioner and any persons who are interested in the estate of the deceased shall petition for fresh grant, listing all the assets of the estate and the bona fide beneficiaries must be listed in P&A 5 for consideration by this court.
 14. The Petitioner to be notified forthwith. Ruling and order to be typed and extracted.
 15. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF MARCH, 2023

R. E. ABURILI

JUDGE

