



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Charles Osiru Nyagwethe (Deceased) (Succession Cause
1046 of 2015) [2023] KEHC 3733 (KLR) (24 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 1046 OF 2015**

RE ABURILI, J

APRIL 24, 2023

IN THE MATTER OF THE ESTATE OF CHARLES OSIRU NYAGWETH .(DECEASED)

IN THE MATTER OF

ROBERT OUKO OSIRU PETITIONER

RULING

1. In this Cause, a grant was issued and confirmed on July 10, 2017 in favour of Robert Ouko Osiru, Peter Seda Osiru and Silas Nyagweth Osiru to administer and share land parcel No. Ksumu/Kasule/1006, the estate of the deceased Charles Osiru Nyagweth, equally.
2. The mode of distribution was proposed and agreed upon by consent of all beneficiaries of the estate of the deceased including daughters who all signed a consent and an affidavit of renunciation of their interest in the estate on December 19, 2016.
3. Later, one of the administrators and beneficiaries, Peter Seda Osiru died on March 4, 2018 due to drowning aged 35 years old as per the death certificate No. 0860599 issued on July 21, 2020.
4. As a result, the remaining two administrators filed summons for rectification of grant issued on July 17, 2017. The application was allowed on December 14, 2020 and a rectified certificate of confirmation of grant was issued on December 15, 2020, listing only Robert Ouko Osiru and Silas Nyagweth Osiru as beneficiaries of the estate comprising Land Parcel No. Kisumu/Kasule/1006 and the share is stated to be equal shares.
5. Once again, the administrator is back to court seeking for rectification of the said rectified certificate of confirmation of grant issued on December 15, 2020 to the effect that they now want the land in question registered in their joint names by way of a correction to the rectified certificate of confirmed grant.
6. I have considered the application and even without involving the parties, I find that the same is untenable for reasons that both beneficiaries have not sworn any affidavit of their intention to change



the mode of distribution agreed on as per the consent leading to the certificate of confirmation of grant issued on July 17, 2017 where they had agreed to share the land equally and that now they wish to be joint registered owners meaning should one joint owner die, the other one takes the whole estate.

7. In addition, I find that the proposed mode of redistribution of the estate, not being consented to by Silas Nyagweth Osiru will be prejudicial to the estate of the deceased as no disclosures have been made on the reasons why the administrator wishes to unilaterally change the mode of distribution and registration of the title to the sole asset of the deceased. Should the beneficiaries agree to be joint registered owners of the land in issue, nothing prevents them from doing so after the transmission of the title and they so express their intention to amalgamate their shares into joint proprietorship. They also must be made aware that should one joint owner die; the property automatically devolves on the surviving joint owner without any succession proceedings.
8. I therefore find the application dated March 10, 2023 not well intended and or merited. The same is hereby declined and dismissed.
9. The land parcel No. Kisumu/Kasule/1006 shall be shared equally between Robert Ouko Osiru and Silas Nyagweth Osiru as initially ordered on 17th July 2017 upon confirmation of the grant.
10. I so order and direct that subject to the provisions of section 83 of the *Law of Succession Act* on rendering of true and accurate accounts of the estate of the deceased within 6 months of the date of this ruling as extended from 1 December 5, 2020, this file is closed and no other application shall be entertained.
11. File closed.

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

R. E. ABURILI

JUDGE

