



**In re Estate of John Abok Ogola (Deceased) (Succession Cause
212 of 1997) [2023] KEHC 18585 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 212 OF 1997
MS SHARIFF, J
MAY 31, 2023
IN THE MATTER OF THE ESTATE OF JOHN ABOK OGOLA
AND
IN THE MATTER OF THE MODE OF DISTRIBUTION
AND
IN THE MATTER OF AN APPLICATION BY;-**

BETWEEN

JAMES JUMA ABOK PETITIONER

AND

CHRISTINE RACHEL ALUOCH AYIEYE OBJECTOR

AND

GRACE ONDU OGOLA RESPONDENT

RULING

1. This court delivered its judgement in the matter on November 21, 2019 appointing James Juma Abok as the sole administrator of the deceased's estate. He was further ordered to file summons for the confirmation of grant within 30 days as of that day distributing the land parcel no. west Kisumu/ Karateng/485 (hereinafter land 'parcel number 485') between the 2nd and 3rd houses.
2. Subsequently, the parties could not agree on the mode of distribution and the parties were directed to file their respective proposals on the mode of distribution.



3. The petitioner James Juma Abok proposed that his brother John Ayieya Abok having missed out on other parcels owned by the deceased, he was compensated with a bigger portion of land parcel number 485 where he has built his homestead. He depones that his brothers to wit Daudi Ogore was given land parcel Kisumu/Karateng/1295, Joseph Abok given land parcel Kisumu/Karateng/1291 and James Juma Abok given land parcel Kisumu/Karateng/1301 by the deceased prior to his death.
4. He depones that all the deceased's sons are entitled to a portion of land parcel 485 and in case the said son has died, his dependants are entitled to a share in his place. He pointed out that the widow of his late brother Grace Ondu Ogola (wife to Joseph Ogola Abok) is entitled to a portion as the said brother had constructed a home in in his portion in parcel number 485. He thus proposes that parcel number 485 be distributed as had been allocated by their deceased father.
5. On her part Christine Rachel Aluoch Ayeye depones that the court had decreed that parcel number 485 be distributed between the 2nd and 3rd houses whilst the said Joseph Ogola Abok comes from the 1st house and is therefore not entitled to a portion in that parcel. She depones that the 2nd house is made up of; Richard Dwasi (deceased) survived by Japheth Ombok Dwasi, John Abok Dwasi, Fredrick Moses Siwa, Rose Atieno Dwasi and Agneta Achieng Dwasi as well as Margaret Ojongo being the daughter of the deceased herein. The 3rd house is made up of James Juma Abok, Christine Ayieye and Risper Auma Abok.
6. Christine Rachel Aluoch Ayeye deposes that the 1st house was confined to Kisumu/Karateng/1291 and accuses the petitioner of drawing up the map of land parcel number 485 to include a share for Joseph Ondu Ogola despite the terms of the judgement. She asserts the portion meant for Joseph Ogola will secretly revert to the petitioner in the event that his proposed distribution schedule is adopted.
7. She thus proposes that land parcel 485 be distributed as follows;
8. James Juma Abok be allocated 1.26 Ha, Christine Rachel Aluoch Ayieye to have 1.50 Ha while Japheth Ombok Dwasi, Fredrick Moses Siwa and John Abok Dwasi to jointly own 0.68 Ha.

Analysis and determination.

9. From the above proposed modes of distribution, I wish to first point out that pursuant to the judgement of the court stated above, the beneficiaries of land parcel number 485 are the members of the 2nd and 3rd households only since the court already found that the said Joseph Ondu Ogola had been provided for elsewhere. The petitioner's plea that the dependants of Joseph Ogola be considered for allocation in land parcel number 485 is misplaced and is hereby rejected since the court had already pronounced itself on the subject.
10. I have also considered the two proposals by the petitioner and Christine which shows that the petitioner has dwelt so much in allocating portions out of parcel number 485 when the court had already made a determination on the same.
11. As it is, the 2nd house is comprised of the dependants of Richard Dwasi (deceased) and Margaret Ojongo and the 3rd house is comprised of the petitioner, Christine Ayieye and Risper Auma Abok who should rightly benefit from land parcel 485.
12. In the circumstances and regard being had to the fact that distribution of a deceased estate ought to be equal as mandated by Sections 35, 38 and 40 of Cap 160, I do find the proposed mode of distribution



fronted by Christine Rachel Aluoch Ayieye to be in accord with this. Consequently, the deceased estate shall be distributed as follows;

Beneficiary Portion

James Juma Abok 1.26 Ha

Christine Rachel Aluoch Ayieye 1.50 Ha

Japheth Ombok Dwasi, Fredrick Moses Siwa &

John Abok Dwasi (Jointly) 0.68 Ha

13. Consequently, a certificate of confirmation of grant do issue in the said terms.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 31ST DAY OF MAY 2023.

MWANAISHA. S. SHARIFF

JUDGE

