



REPUBLIC OF KENYA



In re Estate of Joseph Onyiero Agengo - Deceased (Succession Cause 472 of 2015) [2023] KEHC 26114 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 472 OF 2015
RE ABURILI, J
NOVEMBER 30, 2023
IN THE MATTER OF THE ESTATE OF JOSEPH ONYIERO AGENGO –
DECEASED
AND
IN THE MATTER OF AN APPLICATION BY
IN THE MATTER OF
CHARLES OBURA ONYIERO PETITIONER**

RULING

1. This Succession Cause was filed on 27th July 2015 by Charles Obura Onyiero the son to the deceased Joseph Onyiero Agengo; to administer the estate of the deceased.
2. In support of the Petition are documents which include the Chief's introductory letter dated 17th April 2015 from Chief of East Kolwa Location which states that the deceased Joseph Onyiero Agengo died leaving behind a widow Mary Agengo Onyiero, George Agengo Onyiero, the son and Charles Onyiero, son who were all adults.
3. There is no mention of the daughter who has appeared today being Millicent Atieno Onyiero. In addition, P&A 5 which is the affidavit in support of the petition for grant only lists as beneficiaries of the estate, the persons named in the Chief's letter and excludes the daughter Millicent Atieno.
4. The grant was issued on 28th April 2022 despite the petition having been filed in 2015 and despite there being no objection to the grant being confirmed.
5. On 1st November 2022, summons for confirmation of grant was filed and in the said summons accompanied by consent to confirmation of grant, and schedule of distribution of the estate, again, Millicent Atieno is conspicuously missing or excluded.



6. In addition, the administrator has listed himself as the only person who is entitled to the sole property of the estate. Whatever the intention, ignorance of the law is no defence.
7. There is no affidavit of renunciation of the entitlement to the estate by the other beneficiaries. Furthermore, a widow cannot be excluded from being a direct beneficiary of the estate even if it is having a life interest in her late husband's sole immovable property or matrimonial home otherwise she can easily fall prey to the machinations of being evicted from the land.
8. Each beneficiary must be listed and their shares indicated in the schedule of distributions of the estate.
9. In this case, the two other beneficiaries are said to simply have signed nil on their shares while the administrator claims to own whole of that parcel of land known as Kisumu/Buoye/5131. That is totally erroneous.
10. For all the above reasons, I find and hold that the grant herein issued to the Petitioner Charles Obura Onyiero is fatally defective.
11. The petitioner failed to disclose material facts which are very important to wit, the existence of another beneficiary of the estate being Millicent Atieno Onyiero and in addition, a grant which excludes and discriminates is incapable of being confirmed.
12. In confirmation, each beneficiary must be allocated their share of the estate. The administrator cannot receive the entire estate.
13. Accordingly, the grant issued on 28th April 2022 to Charles Obura Onyiero to administer the estate of Joseph Onyiero Agengo is hereby revoked and annulled. The family shall petition for a fresh grant.
14. As the value of the estate is far much below the ksh 20,000,000, I hereby direct that the fresh petition for grant shall be filed at Nyando Senior Principal Magistrate's Court of close geographical jurisdiction to the parties herein.
15. I so order and close this file.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF NOVEMBER, 2023

R. E. ABURILI

JUDGE

