



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

PROBATE & ADMINISTRATION NO.21 OF 2019

IN THE MATTER OF THE ESTATE OF: IBRAHIM MIRERI OGEDA.....DECEASED

BETWEEN

JAMES ALLUGHA.....1ST APPLICANT

SHADRACK ALUGA2ND APPLICANT

AND

MARGARET AUMA MUMARESPONDENT

RULING

1. The applicants herein, moved the court by Notice of Motion dated 3rd April, 2021. It was brought under sections 3 and 3A of the Civil Procedure Act. They are seeking the following orders:

- a. That this application be certified as urgent. [Spent]
- b. The Honourable court be pleased to set aside consent order dated 1st October, 2019.
- c. That costs of this application be in the cause.

2. The application was premised on the following grounds:

- a. That the said consent was not signed by George Otieno Mireri and or his advocate.
- b. That the contents of the said consent did not receive the approval of the said George Otieno Mireri who was a party to the suit.
- c. That the purported mode of distribution was done without the consent of the said George Otieno Mireri who represented other beneficiaries.
- d. That the said consent has disinherited other beneficiaries.

3. The respondents opposed the application on ground that the consent entered is binding to all the parties.

4. There are two issues that are evident in this matter. At the time of filing the consent dated 15th July, 2019 other than Ibrahim Onyango Muma, George Otieno Mireri was also a party. He was not involved in the said consent. Equally, the firm of H.O Mimba & Company Advocates for the petitioners was not involved and yet it was on record for the applicant.

5. The practice is that when a party is represented by an advocate, one does not deal with a party so represented directly. Why the firm of Bana & Company Advocates chose to deal with one of the parties directly is not clear. The issue is compounded further by the fact that one of the parties to the succession cause was not involved. This therefore cannot be a consent of the parties in the matter.

6. From the foregoing, the consent of 1st October, 2019 is set aside and any actions that may have flowed from the said consent is hereby

nullified. The estate reverts to the position it was in prior to the impugned consent.

7. Costs be borne by the respondent.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF FEBRUARY, 2022

KIARIE WAWERU KIARIE

JUDGE