



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 374 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE HEZEKIA ODONGO

IN THE MATTER OF AN APPLICATION BY JAMES WASONGA DIANGA,

SERFINE AWUOR ODUOR, REBEKA AKINYI OGILO,

MARGARET AKINYI MUKOLO AND

EVALINE AWUOR OSAMO.....OBJECTORS/APPLICANTS

AND

MAURICE CHIMERI CHIMERI.....PETITIONER/RESPONDENT

RULING

Before me is a Summons for Confirmation of Grant dated 14th November 2019.

1. The Petitioner, **MAURICE CHIMERI CHIMERI**, has identified **L.R. NO. NORTH GEM/MALIERA/972** as the only asset comprising the Estate of the late **HEZEKIA ODONGO**.
2. The Petitioner identified the following six persons as those who survived the deceased at the time of his death;

(i) Maurice Chimeri Chimeri;

(ii) James Wasonga Dianga;

(iii) Serfine Awuor Oduor;

(iv) Rebeka Akinyi Ogilo;

(v) Margaret Akinyi Mukolo;

(vi) Everline Awuor Osamo.

3. It was the Petitioner's proposal that he should be given 0.6 Hectares; leaving 1.6 Hectares which should be given to the other five beneficiaries.

4. In answer to the application dated 14th November 2019, an Affidavit of Protest was filed by five protesters, namely;

(i) James Wasonga Dianga,

(ii) Serfine Awuor Oduor,

(iii) Rebeka Akinyi Ogilo,

(iv) Margaret Akinyi Mukolo, and

(v) Everline Awuor Osamo.

5. The Protestors asserted that the Petitioner was a total stranger to the estate of the deceased.

6. Meanwhile, the Protestors described themselves as the only beneficiaries of the estate of the late Hezekiah Odongo.

7. The Protestors told this Court that the Petitioner had instituted proceedings at the Senior Principal Magistrate's Court, Siaya, wherein he was seeking orders to evict the Protestors from the suit property.

8. The Petitioner's suit, before the Court in Siaya, is premised upon his claim of ownership of the land in question.

9. The Petitioner filed an affidavit in answer to the Affidavit of

Protest. He conceded that the five Protestors were beneficiaries of the estate of the late Hezekiah Odongo.

10. But the Petitioner completely denied the suggestion that he was a stranger to the suit property. His contention was that Hezekiah Odongo had only purchased a portion of the suit property from **HENRY SONGA**

11. Based upon the said concession, the Petitioner was wrong to have had the whole parcel of land transferred to his name, in 2017.

12. In my Ruling dated 28th October 2019 I revoked the Certificate of Confirmation of Grant dated 22nd November 2017. By my said Ruling I made it clear that after the Confirmation of Grant was revoked, that would provide each of the parties with an opportunity to satisfy the Court about their respective entitlements to the suit property.

13. It is common ground that the issue regarding the competing claims regarding the ownership of the suit property is pending in the case of **MAURICE CHIMERI CHIMERI vs JEREMIAH WASONGA DIANGA & 3 OTHERS, ELC CASE NO. 196 OF 2018**, Siaya.

14. It is that case that will determine the issue of ownership.

15. After the Court has determined what constitutes the property of the deceased (Hezekiah Odongo Diang'a), the said asset would be available for distribution.

16. Before the question of ownership is determined, it would be premature to purport to distribute the estate, because it would still be unclear what constituted the Free Property of the

deceased.

17. In the circumstances, I decline to issue orders for the Confirmation of the Grant. I direct that the issue concerning confirmation of the grant shall await the determination of the question concerning ownership, which is pending in **SIAYA ELC CASE NO. 196 OF 2018**.

18. For the avoidance of any doubt, this Court had not yet determined the Summons for Confirmation of Grant dated 14th November 2019. The said application stands stayed, pending the decision on ownership.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF FEBRUARY 2022

FRED A. OCHIENG

JUDGE