



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Richard Odwako Olunga (Deceased) (Succession Cause 383 of 2011) [2022] KEHC 15426 (KLR) (17 November 2022) (Ruling)

Neutral citation: [2022] KEHC 15426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 383 OF 2011
JR KARANJA, J
NOVEMBER 17, 2022**

RULING

1. The present application dated April 27, 2021 is brought by summons for confirmation of grant by Rosemary Achieng Odwako one of the administrators in the grant issued on April 20, 2021 and amended on June 11, 2021, respecting the estate of the late Richard Odwako Olunga (deceased). The other administrator is Denis Lawrence Obai, who filed an affidavit of protest to confirmation of the grant dated November 17, 2021 which was argued herein by written submissions.

In that regard, the applicant's submissions were filed on June 7, 2022 through Bogonko, Otanga & Co. Advocates while those of the petitioner/respondent/co-administrator were filed by Ashioya & Co. Advocates.

- (2) It is apparent from the submissions that the issue for determination is whether the respondent co-administrator provided and established satisfactory grounds for rejection of the applicant's co-administrator's application for distribution of the estate of property LR. No. Samia/Nambuku/161, in the manner suggested in paragraph 5 of her supporting affidavit dated 27th April, 2021, to wit that the property be shared equally between her and her sister Judith as the daughters of the deceased and the respondent as the only son of the deceased.

In protest, the respondent suggested in paragraph 5 of his affidavit that the property be shared between him and one Celestyno Hillary Oduory.

- (3) Having given due consideration to the application and the protest on the basis of the rival submissions this Court is of the view that the mere grant of a fresh grant dated April 20, 2021 as amended on June 11, 2021 meant that the duly confirmed and rightful beneficiaries of the estate are the two co-administrators and their sister Judith. Any other person would in the circumstances be regarded as a stranger to the estate and if he/she claims a share of the estate on account of a sale agreement then the remedy would be in a land dispute case against the estate of the deceased or any of the beneficiaries in the Environment & Land Court rather than this succession cause.
- (4) It would therefore follow that the attempt by the respondent/protestor to include a stranger as a beneficiary of the estate and exclude the applicant and her sister as such beneficiaries amounts to an



illegality and discrimination of the daughters of the deceased in denying them the right to inheritance of their late father's property.

In the circumstances, it cannot be said that the protestor has provided and established satisfactory grounds for rejection of the summons for confirmation of grant presented herein by the applicant.

- (5) In sum, the protest is without merit and is hereby dismissed with orders that the impugned summons for confirmation of grant dated April 27, 2021 be and is hereby allowed and a certificate of confirmation of grant do issue forthwith in the manner proposed in paragraph 5 of the supporting affidavit dated April 27, 2021.

Ordered accordingly.

J.R. KARANJAH

J U D G E

DATED AND DELIVERED THIS 17TH DAY OF NOVEMBER, 2022

