



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

SUCCESSION CAUSE NO.39 OF 2016

IN THE MATTER OF THE ESTATE OF OSORO MOTARI (DECEASED)

MISHAEL OGOTI OSORO.....OBJECTOR

-VERSUS-

JERUSA MOIGE OSORO.....1ST RESPONDENT

DUNCAN OMARI OSOR.....2ND RESPONDENT

DANIEL TITUS GESICHO.....3RD RESPONDENT

WILSON NYABAYO OSORO.....4TH RESPONDENT

RULING

1. On the 25th February 2020 this court delivered a Ruling which determined the mode of distribution of the estate of **Osoro Motari. Jerusa Moige Osoro, Daniel Gesicho Osoro, Duncan Omari Osoro, Wilson Nyabayo, Roseline Osoro, Junes Osoro, Martha Osoro and Marisellah Osoro** were to inherit 2/3 of Land Parcel No. Bassi/Bogetari11/2301, the said parcel was being shared equally amongst the said beneficiaries of the 1st house. **Peter Gesimba Osoro, Simon Nyabate Osoro, Ayibu Osoro and Magoma Osoro** were to inherit 1/3 of Land Parcel No. Bassi/Bogetario11/2301 was to be shared equally amongst the beneficiaries of the 2nd house. The administrators of the estate are **Jerusa Mogire Osoro and Mishael Ogoti Osoro**.

2. There are two applications for consideration in this Ruling the application dated the 19/8/2020 filed by **Mishael Ogoti Osoro (Mishael)** and the application dated 16/9/2020 filed by **Wilson Nyabaro Osoro (Wilson)**.

3. On the 19/8/2021 **Mishael Ogoti Osoro** filed an application that the Deputy Registrar of the Court be mandated to sign and execute all the necessary forms for the transfer of Bassi/Bagetaorio/11/2301 on beneficiaries whose signature cannot be procured. That upon the later prayer being granted the Land Registrar-Kisii Central do issue a Title Deed in favor of all the beneficiaries listed in the certificate of confirmation of grant.

4. The application is supported by the applicant's affidavit dated the 1st August 2020. He deposes that the respondents have declined to sign the relevant transfer forms regarding the estate hence the application. That unless the orders are granted the grant confirmed may be futile and will deny the applicant the fruits of his judgment.

5. **Wilson Nyabayo Osoro** in his application dated the 16/9/2020 seeks to have the certificate of confirmation of grant which was issued on the 25th February 2020 to be rectified and that costs be in the cause. The applicant deposes that his name should read Wilson Nyabaro Osoro and not Wilson Nyabaro. In his ground on the face of the application the applicant states as follows; That the 1st applicant is 118 years and that she is holding in trust the parcel for the sons and the children of the 2nd wife but the certificate of confirmation has included one Jerusha Moige Osoro as a beneficiary and the name of Jerusha should be removed from the distribution of the estate as a beneficiary. That her daughters named in the certificate of confirmation of grant have no interest in the estate and their names should be removed from the said certificate of confirmation of grant issued on the 25th February 2020. In his supporting affidavit the Wilson reiterates his grounds word for word. He only adds that during the hearing of the objection by Michael Ogoti Osoro and his sisters could have been called to court to confirm the position but that was not the case.

6. In a replying affidavit dated the 21/9/2020 **Wilson** deposes as follows that the application dated the 19/8/2020 is bad in law and an abuse of the Court process and should be struck off. That they have never met as a family to agree on how the purported forms should be signed

and his other respondents have never seen the purported forms to sign as alleged by the objector and at the same time the certificate of confirmation of grant issued by the court has errors on the names which should be rectified before any further action is taken. That the applicant has other hidden interest. That he learnt of the application on the 16/9/2020 when he came to file his application and that he was not served with the application dated the 19/8/2020.

7. **Mishael** filed a replying affidavit dated the 7/10/2020 in response to the application dated the 16/9/2020. He deposes as follows; that he has no objection to the plea for rectification of the 4th respondent's name. That the 1st respondent is their mother and an administrator of the estate by law a beneficiary and that the mere fact that she is old does not preclude her from being a beneficiary of their late father's estate. That this court has ruled on the matter and that the 4th respondent has not challenged the court's ruling by filing an appeal against the ruling. He relied on Articles 40 (1), 65, 65 (2) and 27 (4) of the Constitution of Kenya 2010 and stated that the 4th respondent is out of order by stating that since his sisters are married and by mere virtue that they are ladies is in contravention of the Constitution. That he has a right to name all the beneficiaries and that he has no mandate to decide on whether they should testify or not in court. That the 4th respondent's application should be struck off.

ANALYSIS AND DETERMINATION

8. At the considering the affidavits' filed by both parties and their oral submissions in court it is evident that Wilson did not appear to have a problem in signing the forms. His only complaint was that he had not seen the form. In my view there is therefore no need to issue an order that the Deputy Registrar signs the said forms. Wilson and other beneficiaries shall sign the forms within 14 days from the date of this ruling. If they fail to do so then the applicant can move to the ELC Court seeking appropriate orders as per the confirmed grant.

9. On the Wilson's application, I note that he did not appeal from the court's ruling. The sisters too have not filed an application for review or setting aside of the said orders. If Wilson was dissatisfied with the court's ruling, then he should have moved to the Court of Appeal. I also agree with the Mishael that the 1st respondent being the wife of the deceased is recognized in law as his widow and a beneficiary of his estate.

10. Lastly the rectification shall not prejudice any of the parties. The certificate of grant issued on the 25th February 2020 shall be rectified and the name of **Wilson Nyabaro** shall be rectified to read **Wilson Nyabaro Osoro**. No orders as to costs in both application as this is a family matter.

Dated, Signed and Delivered at KISII this 28th day of April 2021

R.E. OUGO

JUDGE

In the presence of:

Wilson Nyabaro Osoro Present in person

Miss Biyaki For the Objector

Miss Biyaki h/b for Mr. Nyatundo For the 1st 2nd and 3rd Respondents

Ms. Jackie Court Assistant.