



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 937 OF 2007

IN THE MATTER OF THE ESTATE OF

JOSEPH OLANG OWEGI (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION/ANNULMENT OF GRANT

FLORENCE AWINO AKUN.....1ST OBJECTOR APPLICANT

ERICK OCHIENG AKUN.....2ND OBJECTOR/APPLICANT

VERSUS

PHILISTA OCHUKA ODALO.....PETITIONER/RESPONDENT

CHARLES RAGAMA OPONDO.....INTERESTED PARTY

RULING

FLORENCE AWINO AKUN and ERICK OCHIENG AKUN have come to court as Objectors, and by their application dated 1st February 2019, they are seeking the following substantive reliefs;

“3. THAT: the Grant of Letters of Administration issued on 29th April 2009, by this Honourable Court be annulled, cancelled or revoked.

4. THAT: all the transfers effected pursuant to the aforesaid Grant be cancelled and/or revoked, and property do revert back to the name of the deceased.”

1. The Objectors reasoned that;

(a) The Petitioner obtained the Grant by concealment of material facts;

(b) There was fraud and misrepresentation;

(c) Persons who were entitled in equality or in priority, to the Letters of Administration, were not properly served with the application of Grant;

(d) Consents were not obtained from persons with equality rights.

(e) Material facts were not disclosed to the Court.

(f) Persons entitled in equality or in priority, to the Grant did not renounce their rights to apply for the Letters of Administration.

(g) The Petitioner, as a Personal Representative, had not rendered a true Account of the Estate of the Deceased, JOSEPH OLANG OWEGI.

2. It is common ground that the Petitioner, **PHILISTER OCHUKA (Alias OCHUKU) ODALO** is a daughter of the Deceased.
3. It was the Objectors' case that the Petitioner was well aware that the parcel of land **L.R. NO. KISUMU/KANYAWEGI/2454** had been apportioned to **SALINA BODO OLANG**, who was the second wife to the Deceased.
4. Whilst the Petitioner acknowledged that **SALINA BODO OLANG** was her step-mother, she denied any knowledge that in 1985, Salina Bodo Olang had sold **L.R. NO. KISUMU/KANYAWEGI/2454** to **VITALIS AKUN AGAI**.
5. The said Vitalis Akun Agai is the husband to Florence Awino Akun; and he is the father to Erick Ochieng Akun.
6. The Objectors were the Administrators of the Estate of Vitalis Akun Agai, pursuant to a Grant issued in **KISUMU SUCCESSION CAUSE NO. 754 OF 2008**.
7. They believe that **L.R. NO. KISUMU/KANYAWEGI/2454** ought to have constituted a portion of the Estate of Vitalis Akun Agai, and not a portion of the Estate of Joseph Olang Owegi.

Did the Objectors rank Equal to or in Priority, compared to the Petitioner?

8. The Petitioner was a daughter to the deceased. On the other hand the Objectors have absolutely no blood relationship or any other familial relationship to the deceased.
9. The Objectors failed to demonstrate how they ranked either equal to, or in priority over the Petitioner, as relates to the Estate of Joseph Owegi.
10. It therefore follows that the Petitioner had no legal obligation to give notice to the Objectors prior to the institution of these proceedings.
11. Secondly, the Petitioner had no legal obligation to seek out and to effect service, of these proceedings, upon the Objectors.

Did the Objectors have locus standi?

12. The Objectors have an interest in **L.R. NO. KISUMU/KANYAWEGI/2454**. The said interest is based upon the alleged purchase of that parcel of land, by Vitalis Akun Agai.
13. If they can prove that Vitalis Akun Agai legitimately purchased the said parcel of land, the Objectors could sustain a claim against the said property.
14. To that extent, the Objectors have the requisite locus standi to bring the application for revocation of the Grant.
15. However, I hasten to add that locus standi must be clearly distinguished from the strength of the claim being made by the Objectors.
16. The fact that a person has a justiciable claim does not, of itself, imply that the claim had a probability of success.

Did Salina Bodo Olang sell to Vitalis Akun Agai the L.R. NO. KISUMU/KANYAWEGI/2454?

17. It is common ground that **L.R. NO. KISUMU/KANYAWEGI/2454** (hereinafter "*the suit property*") belonged to Joseph Owegi Olang.
18. Joseph died on 12th June 1980. He was survived by two widows, namely Philister Ochuka Odalo and Salina Bodo Olang.
19. According to the Objectors, Salina sold the suit property to Vitalis on 19th July 1985. In effect, Salina is said to have sold the suit property more than five (5) years after Joseph died.
20. The fact that Salina was a widow to Joseph did not, and could not, of itself, confer upon her the legal mandate to sell the suit property.
21. A widow is ordinarily entitled to institute succession proceedings, with a view to having the property constituting the Estate of her deceased husband transmitted his heirs.
22. But unless the widow takes the appropriate legal steps, the fact that she was a widow or the fact that she was in occupation of a property belonging to her late husband, does not confer upon her, the right to dispose of the said property through sale or otherwise.
23. The Objectors cited the case of **JANES OTIENO OCHIDO Vs PATRICK LUMUMBA OMEDO, IN THE MATTER OF THE ESTATE OF OWINO RACHIER, SUCCESSION CAUSE NO. 64 OF 2015**, to back-up their case.

24. In that case, the Objector was the son of **JAKIM**, who had purchased the suit land from the deceased. Hon. Lady Justice Cherere held as follows;

“16. From the evidence on record, the deceased had, at the time of his death, disposed of his ‘free property’ in Land Parcel No. KISUMU/BAR/1072 to JAKIM, the father of the Objector. Clearly, the suit land to which this succession cause relates was not deceased’s ‘free property’ at the time of his death.”

25. In those circumstances, the learned Judge went on to declare that because the deceased had sold the suit land to **JAKIM**, the said parcel of land was therefore not available for the benefit of the Petitioner.

26. As the court had earlier confirmed the Grant, and granted title of the suit property to the Petitioner, the learned Judge revoked the Grant.

27. That case is completely distinguishable from the case before me, as in this case, the suit property had not been sold by the deceased.

28. Cherere J., when rendering her decision in **Succession Cause No. 64 of 2015**, had occasion to make the following statement;

“19. I similarly associate myself with the holding in Ileri Nyaga V. Karani Mgari & Another, Embu H.C. Succ. No. 68 of 2007 [2010] eKLR, where it was held that a buyer’s or purchaser’s recourse lies in suing whoever sold the property to him, and if such person be dead, then he can only sue the administrator of the deceased’s estate.”

29. Bearing in mind the fact that it was the Objectors who cited the decision in **Succession Cause No. 64 of 2015**, I believe that they should have derived the requisite guidance from it.

Who is the rightful owner of the suit property?

30. The Administrators of the Estate of Vitalis Akun Agai state that it constitutes part of the Estate of Vitalis.

31. On the other hand, the Petitioner insisted that the suit property had been lawfully transmitted to the Interested Party, **CHARLES RAGAMA OPONDO**.

32. The Interested Party, (hereinafter “Charles”) swore a Replying Affidavit on 7th June 2019.

33. He deponed that the Petitioner sold the suit property to him for the sum of Kshs 45,000/=. He annexed a copy of the agreement dated 6th April 1995.

34. Considering that the Grant was confirmed on 30th April 2010, it follows that as at 6th April 1995 the Petitioner had no capacity in law, to sell the suit property.

35. The Interested Party also exhibited an “*Agreement of Sale of Land*” dated 20th November 2008, indicating that the Petitioner had agreed to sell the suit property to him. This time the sale price was cited as Kshs 200,000/=.

36. There is absolutely no explanation why the Petitioner and the Interested Party had entered into two separate Agreements for the sale of the suit property.

37. But one thing is crystal clear: that because the Grant was not confirmed until 30th April 2010, it follows that by 20th November 2008, the Petitioner lacked the requisite legal capacity to sell the suit property.

38. The fact that the Petitioner was the Administrator of the Estate of the late Joseph Olang Owegi, did not confer upon her, the legal authority to sell the suit property.

39. Accordingly, parties who believe that they are the legitimate owners of the suit property may have to institute appropriate proceedings to have the Court determine the issue of ownership.

Should the Grant be revoked?

40. As I have already held, the appointment of the Petitioner as the Administrator of the Estate of Joseph Olang Owegi was proper in every respect.

41. However, the confirmation of the Grant appears to be tainted, considering that the deceased was survived by two widows, but only one of the said widows has got the whole Estate. Secondly, by selling off the suit property before the Confirmation of the Grant, the Petitioner acted irregularly.

42. Thirdly, I note that in the letter dated 2nd February 2006, the Assistant Chief of Kanyawegi Sub-location said that Philista Ochuka Odalo was one of the 2 daughters of Joseph Olang Owegi.

43. According to the said Assistant-Chief, the widow to Joseph Olang Owegi had died in 1992.
44. He further disclosed that Petro Odhiambo Olang and Tako Olang, who were sons to the deceased, had passed away.
45. He named Jane Ongang'a Odhiambo as a sister to Philista Ochuka Odalo.
46. The question that now arises is whether or not the 2 sons left behind offspring, who could thus be beneficiaries; and also whether or not Jane Ongang'a Odhiambo consented to the entire Estate being inherited by Philista.
47. The record of the proceedings does not reveal the involvement of the said "*children*" of the deceased, in the process of this Succession Cause.
48. Justice, therefore demands that the Certificate of Grant be and is hereby revoked.
49. The Title Deed issued to Charles Ragama Opondo is ordered to be cancelled; and the Interested Party is directed to surrender the original thereof to the Registrar of Lands, for cancellation.
50. **L.R. NO. KISUMU/KANYAWEGI/2454** and **L.R. NO. KISUMU/KANYAWEGI/2556** are to revert to the name of **JOSEPH OLANG OWEGI**.
51. The Petitioner is ordered to pay to the Objectors the costs of the application dated 1st February 2019.

DATED, SIGNED at DELIVERED at KISUMU

This **29th** day of **April** 2020

FRED A. OCHIENG

JUDGE