

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 341 OF 2001

IN THE MATTER OF THE ESTATE OF WILLIAM ODENY MASARA (DECEASED)

RULING

1. This cause relates to the estate of William Odeny Masara, who died on 27th February 1997. A letter from the Chief of Bukhungu Location, dated 16th July 2001, indicates that the deceased was survived by two widows, Margaret Akelo Odeny and Anastancia Ayula Odeny, and two sons, John Oloo Odeny and Francis Kaniga Odeny. The deceased is said to have died possessed of Isukha/Shirere/659.
2. Representation to the estate of the deceased was sought by John Oloo Odeny, in his capacity as son of the deceased. He listed himself, the two widows and Francis Kaniga Odeny as the survivors of the deceased, and listed Isukha/Shirere/659 and Kisumu/Tamu/191 and 591 as the assets of the estate. Letters of administration intestate were made to him on 23rd October 2001, and a grant duly issued, dated 25th October 2001.
3. The grant was confirmed on 18th February 2009. Isukha/Shirere/659 was devolved upon John Oloo Odeny, with the two widows having life interest; while Kisumu/Tamu/191 and 591 were devolved wholly upon Francis Kaniga Odeny. A certificate of confirmation of grant was duly issued, dated 16th March 2009. Prior to the confirmation, it transpired that the deceased had eight (8) daughters, who swore separate affidavits, on 12th February 2009, expressing support for the distribution proposed. The said daughters are Josephine Owili, Emily Ooko, Anjeline Oure, Mary Akinyi, Agnes Anyango, Monica Ojenge, Leonida Masara and Brigida Rao.
4. On 28th February 2014, a summons was lodged herein, dated 20th February 2014, by William Masara Ooko, saying he was a son of the deceased, claiming that the representation to the estate had been obtained without involving him. He claimed that he was the one entitled to Kisumu/Tamu/191. The said application was resolved through an order made on 20th May 2014, revoking the grant on record and distributing Kisumu/Tamu/191 (1009 and 1010) to William Masara Oloo. Following that order, a certificate of confirmation of grant was issued, dated 9th June 2014, curiously confirming that grant that had been revoked by the same order of 20th May 2014. According to the said certificate Kisumu/Tamu/591, 1009 and 1010 devolved wholly upon William Masara Ooko, while Isukha/Shirere/659 devolved wholly upon John Oloo Odeny.
5. William Masara Ooko then filed the application dated 23rd April 2015, seeking amendment of the certificate of confirmation of grant, to reflect the names William Masara Ooko and Francis Kaniga Odeny referred to the same person, and to direct the land registrar to register Kisumu/Tamu/1009 in the name William Masara Ooko instead of the name of Francis Kaniga Odeny, and for removal of Kisumu/Tamu/1010 from the said certificate. He stated that the land registrar had declined to register the property because of the two names.
6. William Masara Ooko subsequently died. The certificate of death attached shows that he died on 7th July 2015. His son, Kennedy Odeny Masara, obtained a grant of letters of administration *ad litem* to his estate, and filed an application dated 30th May 2017, seeking to substitute his father as a party in the proceedings. That application, dated 30th May 2015, was allowed on 16th October 2017, making the substitution.
7. The substitution orders paved the way for the consideration of the application dated 24th April 2015. John Oloo Odeny swore an affidavit on 4th September 2018. From his affidavit I note that he concedes that his brother, Francis Kaniga Odeny, was also known as William Masara Ooko. He argues that the application abated with the death of Francis Kaniga Odeny alias William Masara Ooko. He explains that his brother had sold part of his inheritance to John Obare, who later sold it to Francis Odhiambo. I note that Njagi J, on 21st March 2018, and I, on 19th September 2019, had expressed that we were not satisfied that Francis Kaniga Odeny and William Masara Ooko referred to one and the same person. Orders were made for the substitute applicant to file documents to establish that the two names refer to the same person. Having seen the averments in the affidavit of John Oloo Odeny, of 4th September 2018, and specifically at paragraphs 13 and 14, there should be no dispute that they refer to one and the same person.
8. Then there is the application dated 23rd April 2015, which sought to have the name Francis Kaniga Odeny substituted with the name William Masara Ooko, on the basis that the two referred to the same person. That application was drawn by the firm of Nyanga & Company, Advocates, the same law firm that drew the affidavit of John Oloo Odeny, sworn on 4th September 2018. I believe that should lay the matter of the names to rest.
9. The application, dated 23rd April 2015, was necessitated by the challenges that the applicant was facing, of having the portions devolved to him transmitted to his name. I find merit in the application. The prayers sought in the application do not in any way prejudice John Oloo Odeny, for they do not affect the distribution ordered on 18th February 2009, in his favour, and amended on 9th June 2014. When the court made the orders of 20th May 2014, that introduced the name William Masara Ooko in the place of Francis Kaniga Odeny, John Oloo Odeny did not raise objection.

10. In the end, the application dated 23rd April 2015 is allowed as prayed. Each party shall bear their own costs. And any party aggrieved has twenty-eight days to challenge the orders at the Court of Appeal.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 22ND DAY OF MAY, 2020

W. MUSYOKA

JUDGE