



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**SUCCESSION CAUSE NO. 825 OF 2010**

**IN THE MATTER OF THE ESTATE OF**

**THE LATE STEPHEN OPIYO AHOYA (DECEASED)**

**AND**

**IN THE MATTER OF ANNULMENT AND CANCELLATION OF GRANT**

**AND**

**IN THE MATTER OF AN APPLICATION BY SILPA ALOO APIYO**

**SILPA ALOO APIYO..... PETITIONER/RESPONDENT**

**VERSUS**

**WILLIAM OTIENO OPIYO.....OBJECTOR/APPLICANT**

**RULING**

The application dated 8<sup>th</sup> February 2018 was brought by the Objector, **WILLIAM OTIENO OPIYO**. He sought the variation of the Grant that had been issued on 22<sup>nd</sup> February 2012.

1. It was his case that the Petitioner, **SILPAH ALOO APIYO**, had colluded with the area Assistant Chief of Jimo East Sub-location to cheat the court that she and 4 other beneficiaries were the only beneficiaries to the Estate of **STEPHEN OPIYO AHOYA**.
2. According to the Objector, he too was a son of the late Stephen Opiyo Ahoya.
3. He said that the deceased had 2 wives, namely **LUCIA ADHIAMBO OPIYO** and **SILPA APIYO**. He was a son of **LUCIA ADHIAMBO**, who was the 1<sup>st</sup> wife.
4. He further said that the deceased left behind the following Six (6) children;

**1. John B. Otieno;**

**2. Peterlis Sadia Opiyo;**

**3. Pius Ouma Opiyo;**

**4. Norbatus Owino Opiyo**

**5. Anna Aoko; and**

**6. William Otieno Opiyo.**

5. The Objector exhibited Form P & A, which the Petitioner had lodged in court as the affidavit supporting the Petition herein. In that Form, the names of Anna Aoko and William Otieno Opiyo are missing.

6. When the Objection came up for hearing on 11<sup>th</sup> September 2018, the Petitioner told the court that she had seven (7) children, whilst her co-wife, Lucia, had five (5) children.
7. The information concerning the number of children in each of the 2 households, was confirmed by the Objector.
8. In the light of that revelation, the court directed the Objector to ensure that the beneficiaries came to court, so that the court could be accorded the opportunity to get a full picture of the matter before me.
9. However, notwithstanding several adjournments, the Objector failed to secure the attendance of the other beneficiaries.
10. Thereafter, both the Objector and the Petitioner told the court that the whole family had resolved the matter, when they had held a meeting that had been chaired by the District Officer. Indeed, the Petitioner even asserted that the Agreement embodying the resolution, had been signed by, inter-alia, the Objector and his son.
11. But the Objector denied either attending the alleged meeting or signing the alleged agreement.
12. In order to enable the court make an informed decision, I issued Summons, directed at the Assistant County Commissioner, North Nyakach Division, to attend court and to produce the original record of the meeting held on 21<sup>st</sup> March 2016.
13. Regrettably, Mr. Evans Nyaberi, who was the Assistant County Commissioner, North Nyakach Division, was transferred.
14. The Objector then told the court that he believed that he could resolve the dispute if he were given time to sit down with the Petitioner.
15. But the Petitioner's view was that the court ought to determine the issues.
16. When the parties put forward their respective cases, it transpired that the Objector had already been given some land. However, he believes that he ought to have been given 1.5 Hectares, instead of the 1.2 Hectares, which he was given.
17. If there were 12 children of the deceased, and if each child got 1.5 Hectares, that would give 18 Hectares.
18. The Objector said that the whole parcel of land was 15 Hectares. However, he did not have any document from which the court could verify the size of the land.
19. On the other hand, the Petitioner said that the whole parcel of land is 15.5 Acres.
20. A perusal of a Certificate of Official Search dated 16<sup>th</sup> November 2010 reveals that **L.R. NO. KISUMU/JIMO EAST/902**, which is registered in the name of the deceased, is 7.8 Hectares. In effect, the said parcel of land is about 17.6 Acres.
21. Out of that parcel of land, the Objector got 1.2 Hectares which translates to 2.64 Acres.
22. By my calculations, if each of the 12 children of the deceased was to get 2.64 Acres, they would require 31.68 Acres. As the available parcel of land is 17.6 Acres, it is not possible to give to each of 12 beneficiaries land which is about the same size as has already been given to the Objector.
23. I also find that although the Objector had asserted that there were other beneficiaries who had raised complaints concerning the confirmation of the Grant herein, there was absolutely no evidence of any such complaints.
24. Thirdly, I find that during the meeting which was held at the offices of the Assistant County Commissioner on 21<sup>st</sup> March 2016, the dispute was resolved. The said issue, at that meeting, was about a public access to the home of the Objector.
25. Although the Objector had told this court that he did not attend the said meeting, the records show that he even appended his signature to the list of the attendees.
26. Furthermore, by the Objector's own concession, the original land parcel No. **KISUMU/JIMO EAST/902** had already been subdivided into two (2) parts. The new titles bear the numbers **KISUMU/JIMO EAST/1356** and **KISUMU/JIMO EAST/1365**.
27. A perusal of the Certificate of Official Search dated 23<sup>rd</sup> September 2019 shows that the Petitioner, Silpa Aloo Opiyo is the registered owner of **L.R. NO. KISUMU/JIMO EAST/1356**. That parcel of land is 1.58 Hectares.
28. It is possible that it is because the Petitioner got 1.58 Hectares, that the Objector felt that he too was entitled to 1.5 Hectares.
29. However, I find that the Objector has not made out a case that could cause the court to revoke the Certificate of Confirmation of Grant dated 6<sup>th</sup> November 2013.
30. He has completely failed to lead any evidence to prove the alleged collusion between the Petitioner and the Assistant Chief of

Jimo East Sub-location.

31. The application dated 8<sup>th</sup> February 2018 is dismissed, with costs to the Petitioner.

**DATED, SIGNED at DELIVERED at KISUMU**

**This 26<sup>th</sup> day of October 2020**

**FRED A. OCHIENG**

**JUDGE**