



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO. 320 OF 1999

IN THE MATTER OF THE ESTATE OF THE LATE CHARLES AWUONDA AKECH

AND

IN THE MATTER OF JAMES ONANDA OGONDA.....APPLICANT/OBJECTOR

VERSUS

JACTON ABAJA AWUONDA.....PETITIONER/RESPONDENT

RULING

The application before me was brought by **JAMES ONANDA OGONDA**, an Objector. He sought the Revocation or the Annulment of the Grant of Letters of Administration which had been issued **JACKTON ABAJA AWUONDA**.

1. It was the Objector's case that **L.R. NO. SOUTH GEM/DIENYA/620** was not part of the Estate of the late **CHARLES AWUONDA AKECH**.

2. According to the Objector, the suit property was registered in the names of the following 3 persons, at the time when the Respondent had asserted that it belonged to the deceased;

(a) *James Onanda Ogonda,*

(b) *James Akech Ogala, and*

(c) *Wilson Oware.*

3. The Objector asserted that he had acquired ownership of a portion of the suit land, through transmission.

4. The Objector is the son of **FANUEL OGONDA**; and according to him, he became entitled to, and did acquire the portion of the suit land following the death of his father.

5. At paragraph 4 of his affidavit, the Petitioner/Respondent stated as follows;

“THAT I know as of my own personal knowledge that the land parcel no. SOUTH GEM/DIENYA/620 was owned by my grandfather, Akech Ogala, Wilson Oware Akech (my father's brother) and Phanuel Ogonda Awuonda, who each had 1/3 share.”

6. The Respondent exhibited the Green card, which confirmed that the name of Phanuel Ogonda Awuonda was **NOT** on the register.

7. Exhibit “**JAA – 1**” showed that the suit land belonged to;

(a) *James Akech Ogala,*

(b) *James Akech Ogala, and*

(c) *James Onanda Ogonda.*

8. Notwithstanding the difference between the deposition of the Respondent and Exhibit “**JAA – 1**”, I note that the Respondent acknowledged on oath, that the Objector’s father was one of the 3 persons who owned the suit land.

9. At paragraph 10 of his affidavit, the Respondent said that the Objector was registered as the proprietor of the father’s share of the suit property, after the Objector had gone through the process of succession.

10. At paragraph 21 of his affidavit, the Respondent deponed that he applied for Letters of Administration on 18th May 1998, following the demise of his father, Charles Awuonda Akech.

11. However, the Respondent concedes that at the time when he applied for the Grant of Letters of Administration, he did **NOT** include the suit property in the list of assets. His reason for omitting the suit property from the list of assets was that;

“..... the suit parcel of land had not yet been transferred to the name of my deceased father.....”

12. So, how did the suit property get transferred to the Respondent’s father?

13. At paragraph 23 of his affidavit, the Respondent said;

“THAT while I was in the process of having it transferred to his name, an appeal was filed at the Provincial Land Tribunal Board by James Akech Ogola and James Onanda Ogonda, and after hearing both parties the said Tribunal concurred with the decision of the Siaya District Land Dispute Tribunal of awarding my father the original land parcel no. South Gem/Dienya/620.”

14. In his written submissions, the Respondent acknowledged that as at the time when the deceased passed away;

“..... issues as to ownership of land parcel no. South Gem/Dienya/620 was still pending before court”

15. Of course, if that property did not belong to the deceased at the time of his death, the Respondent cannot have cited it in the list of assets.

16. Pursuant to **Section 3 (1)** of the **Law of Succession Act**;

“free property, in relation to a deceased person, means the property of which that person was legally competent freely to dispose of during his lifetime, and in respect of which his estate has not terminated by his death.”

17. It is thus common ground that the suit property was not a part of the “free property” of the deceased at the time of his death.

18. It is further common ground that the suit property was owned by 3 people at the time when the deceased passed away.

19. If the Respondent was entitled to his late father’s share of the suit property, that implies that he ought not to have taken over the ownership of the whole suit property.

20. As the ownership of the suit property became an issue following the demise of the Respondent’s father, transmission of ownership ought to have been determined through the process of succession.

21. It is a matter of law, that the Land Disputes Tribunals lacked jurisdiction to hear and determine issues appertaining to the ownership of land.

22. Jurisdiction is everything!

23. It is well settled that any Court or Tribunal which acts without jurisdiction cannot confer rights.

24. In my considered opinion, the lack of jurisdiction is a blot on the validity of the decision rendered by the court or the tribunal.

25. But I am not sitting on an appeal over the determination rendered by the Tribunal. Therefore, I refrain from making a pronouncement as to whether or not the decision of the Tribunal is valid, notwithstanding the tribunal’s apparent lack of jurisdiction.

26. However, I find that the Respondent, by his own concession, was never entitled to the whole suit property. At most, he was entitled to the share that belonged to his late father.

27. In my understanding of the facts before me, the Respondent’s father was entitled to one-third of the suit property.

28. Consequently, it was wrong to have conferred upon the Respondent, ownership of the whole suit property.

29. I therefore revoke the confirmation of Grant herein, and direct that the issue of distribution of the estate of the late Charles Awuonda

Akech, be determined afresh.

30. The Respondent will pay to the Objector, the costs of the Application dated 17th May 2019.

DATED, SIGNED and DELIVERED at KISUMU This 30th day of November 2020

FRED A. OCHIENG

JUDGE