



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**(CORAM: CHERERE-J)**  
**SUCCESSION CAUSE NO. 909 OF 2004**  
**IN THE MATTER OF THE ESTATE OF CORNEL ODUOGO NYAGAGA (DECEASED)**  
**BETWEEN**  
**MATHLIDA ADOYO ODUOGO.....PETITIONER/RESPONDENT**  
**AND**  
**JUSTINE AJIEKE ODUOGO.....OBJECTOR/APPLICANT**  
**JUDGEMENT**

**Introduction**

1. **CORNEL ODUOGO NYAGAGA** (deceased) died sometimes on 18th April, 1997. Deceased's estate comprised of the following:

- i. Land Parcel No. **Kisumu/Koker Kajulu/2080**
- ii. Land Parcel No. **Kisumu/Koker Kajulu/2064**
- iii. Land Parcel No. **Kisumu/Koker Kajulu/2103**
- iv. Land Parcel No. **Kisumu/Koker Kajulu/2108**
- v. Land Parcel No. **Kisumu/Koker Kajulu/2119**
- vi. Land Parcel No. **Kisumu/Koker Kajulu/2828**
- vii. Land Parcel No. **Kisumu/Koker/Kajulu/2832**

2. Letters of administration were issued in Petitioner's favour on 16th March, 2007. The grant was confirmed on 5th October, 2005 in favor of the Petitioner/Respondent in the whole of the following properties:

- Land Parcel No. **Kisumu/Koker/Kajulu/2108**
- Land Parcel No. **Kisumu/Koker/Kajulu/2828**
- Land Parcel No. **Kisumu/Koker/Kajulu/2832**

**Application**

3. The applicant/objector filed an affidavit in support of revocation on 7th October, 2015. On 8th October, 2015, Mr. Anyul advocate for the petitioner/respondent conceded to the revocation. The court consequently revoked the grant issued to the petitioner/respondent on 8th

October, 2015 and issued letters of administration to both parties on 8th January, 2016.

4. The dispute before the court relates to distribution of the deceased's estate.

#### **Objector/Applicant's Case**

5. In her evidence, the applicant/objector stated that the deceased was survived by children and two widows, petitioner/respondent the eldest wife and herself the youngest wife the second namely Risper having died. Her evidence was that the deceased owned other properties other than the seven (7) named at paragraph one hereinabove but she did not tender evidence in support thereof. I will therefore address myself to what has been demonstrated to belong to the deceased. The applicant/objector proposed that the estate be distributed as follows:

- i. Land Parcel No. **Kisumu/Koker Kajulu/2080** - equal share between petitioner and objector
- ii. Land Parcel No. **Kisumu/Koker Kajulu/2064** - equal share between petitioner and objector
- iii. Land Parcel No. **Kisumu/Koker/Kajulu/2108 – (homestead)** - Equally between the three widows to the deceased
- iv. Land Parcel No. **Kisumu/Koker Kajulu/2828** - wholly to the applicant/objector
- v. Land Parcel No. **Kisumu/Koker/Kajulu/2832** wholly to the applicant/objector

6. The Applicant/Objector did not make any proposal in respect of land parcel numbers:

- i. **Kisumu/Koker Kajulu/2119**
- ii. **Kisumu/Koker Kajulu/2828**

#### **Petitioner/Respondent's Case**

7. The petitioner stated that she was the 1st widow of the deceased whereas the Applicant/Objector was the second. She denied that deceased was married to one Risper as alleged by the Applicant/Objector.

8. The Petitioner/Respondent proposed that the estate be distributed in equal shares between her and the objector to hold in trust for their children.

#### **Analysis and Determination**

9. I have considered the evidence on record. As stated hereinabove, the dispute before the court relates to distribution of the deceased's estate.

10. The issue of whether the deceased had a wife namely Risper is denied by the Petitioner/Respondent. But even if such a wife existed, it is averred by the Applicant/Objector that the said Risper died without a child to whom distribution can be made. Distribution shall therefore be made only to the Applicant/Objector and Petitioner/Respondent and their children.

11. The parties have conceded that they have settled on **Land Parcel No. Kisumu/Koker Kajulu/2108** (homestead). There is no evidence that any of the parties has developed any of the other properties as to entitle them to exclusive use of the same.

12. Having said that, I find that the interests of justice dictates that the estate be distributed in equal shares as between the petitioner and the objector to hold in trust for their children.

#### **Disposition**

13. In the result, the court makes orders **THAT:-**

(a)

- i. **Land Parcel No. Kisumu/Koker Kajulu/2080**
- ii. **Land Parcel No. Kisumu/Koker Kajulu/2064**
- iii. **Land Parcel No. Kisumu/Koker Kajulu/2103**
- iv. **Land Parcel No. Kisumu/Koker Kajulu/2108 (homestead)**
- v. **Land Parcel No. Kisumu/Koker Kajulu/2119**

vi. Land Parcel No. Kisumu/Koker Kajulu/2828

vii. Land Parcel No. Kisumu/Koker/Kajulu/2832

shall be distributed equally between the Petitioner/Respondent MATHLIDA ADOYO ODUOGO and Applicant/Objector JUSTINE AJIEKE ODUOGO.

(b). MATHLIDA ADOYO ODUOGO shall hold a life interest in half of each for the properties for the benefit of the following in equal shares:

i. Francisca Amolo

ii. Michael Onyango and Cynthia Anyango children of Romanus Bwana (deceased)

iii. Adhiambo and Akoth Anyango children of Rose Atieno (deceased)

iv. Carolyne, Lilian and Molly Anyango children of Milka Akinyi (deceased)

v. Phelix Otieno s/o Charles Otieno (deceased)

vi. George Odhiambo

vii. Bernard Onyango

viii. Penina Auma

(c) JUSTINE AJIEKE ODUOGO shall hold a life interest in half of each for the properties for the benefit of the following in equal shares:

i. Caleb Ochieng Oduogo

ii. Jared Owino Oduogo

iii. Hassan Mwiyi Oduogo

iv. Amos Odinga Oduogo

v. Pamella Adhiambo Oduogo

vi. Nancy d/o Ascar Akinyi Oduogo (deceased)

(d) Each party shall bear its own costs

DELIVERED AND SIGNED AT KISUMU THIS 14<sup>th</sup> DAY OF March 2019

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistant - Felix

Petitioner/Respondent - Present

For Petitioner/Respondent - Mr Othong/Mr Anyul

Objector/Applicant - Present