



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S.MAJANJA J.

SUCCESSION CAUSE NO. 95 OF 2015

IN THE MATTER OF THE ESTATE OF

ROBERT RODGERS OBWOCHA ALIAS OGWAGWA (DECEASED)

BETWEEN

PETER MOGAKA MOKUA APPLICANT

JEMIMAH KWAMBOKA OGWAGWA.....APPLICANT

AND

PRISCA KWAMBOKA OBWOCHA.....RESPONDENT

RULING NO. 2

1. The matter concerns the estate of Robert Rodgers Obwocha *alias* Ogwagwa (“the deceased”). He died intestate and left behind one property namely **CENTRAL KITUTU/MWABOSIRE/849** (Plot “849”). Prisca Kwamboka Obwocha (“Prisca”), as the deceased’s widow, applied for grant of letters of administration for the deceased’s estate. Following an objection and cross-application for grant by Peter Mogaka Mokuu (“Peter”) and Jemimah Kwamboka Ogwagwa (“Jemimah”), the matter was litigated and by a ruling dated 21st December 2018, I found as follows:

*[12] I find and hold that the since the deceased died between 27th November 2001 and 26th December 2001 the distribution of his estate is subject to the **Law of Succession Act (Chapter 63 of the Laws of Kenya (“the Act”))**. I am also satisfied that he objectors have proved that the deceased had two wives. The first wife; Nyabeti Makori, had two children Douglas Magoba Akora (deceased) and Peter Mogaka. Douglas was survived by his wife Jemimah Kwamboka Ogwagwa. The petitioner, who is the second wife, has five children; Everline Bonareri Obwocha, Enock Nyakoe Obwocha, Polycarp Mose Obwocha, Conceptor Mora Obwocha and Alex Ondimu Obwocha.*

2. Since the deceased had two houses, I directed that the grant of letters of administration issue to **Prisca Kwamboka Obwocha**, the surviving spouse from the second house and **Peter Mogaka Mokuu**, the deceased’s son from the first house. I directed them or any of them to present an application for confirmation of grant within 30 days from the date of that ruling.

3. Peter presented the summons for confirmation of grant dated 30th January 2019 and proposed that Plot 849 be shared between the two houses equally and with each administrator holding the land in trust for the respective families. Prisca did not file an affidavit of protest but indicated when the matter came up several times that she had filed an appeal in the Court of Appeal. On 11th February 2019, I directed her to move the Court of Appeal for an order of stay but she had not done so or obtained an order of stay. I am therefore called upon to determine the distribution.

4. Since the deceased was a polygamous man, the property is to be divided in accordance with **section 40(1) of the Law of Succession Act (Chapter 160 of the Laws of Kenya)** (“the LSA”) which provides:

40(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

5. In light of the aforesaid provision, I decline the proposal by Peter of dividing the property equally between the houses as no basis has been furnished to depart from **section 40** of the LSA. It shall be divided equally between the surviving wife and all the children. The first wife;

Nyabeti Makori, had two children Douglas Magoba Akora (deceased) and Peter Mogaka. Douglas was survived by his wife Jemimah Kwamboka Ogwagwa. Prisca, the second wife, has five children; Everline Bonareri Obwocha, Enock Nyakoe Obwocha, Polycarp Mose Obwocha, Conceptor Moraa Obwocha and Alex Ondimu Obwocha.

6. I allow the summons for confirmation dated 30th January 2019 on terms that **LR CENTRAL KITUTU/MWABOSIRE/849** shall be shared equally between Jemimah Kwamboka Ogwagwa, Peter Mogaka, Prisca Kwamboka, Everline Bonareri Obwocha, Enock Nyakoe Obwocha, Polycarp Mose Obwocha, Conceptor Moraa Obwocha and Alex Ondimu Obwocha. However, Prisca Kwamboka shall hold her share and the shares of Everline Bonareri Obwocha, Enock Nyakoe Obwocha, Polycarp Mose Obwocha, Conceptor Moraa Obwocha and Alex Ondimu Obwocha in trust for them in equal shares.

7. There shall be no order as to costs as this is a family matter.

DATED and DELIVERED at KISII this 27th day of MAY 2019.

D. S. MAJANJA

JUDGE

Mr Onchwangi instructed by Oguttu-Mboya and Company Advocates for the applicants.

Prisca Kwamboka in person.