



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 284 OF 1993**

**IN THE MATTER OF THE ESTATE OF ACHWOKA AMBEBA (DECEASED)**

**RULING**

1. The cause herein relates to the estate of Achwoka Ambeba, the deceased, who died on 5<sup>th</sup> May 1973 at the age of seventy-four years, according to the certificate of death on record. According to a letter dated 16<sup>th</sup> August 1993, from the Office of the Chief of West Bunyore Location the only rightful heir of the deceased was his daughter-in-law, Figneta Otiende Achwoka, being a widow of the deceased's only son known as Augustino Ambeba.
2. Figneta Otiende Achwoka sought representation to the estate of the deceased vide a petition filed herein on 20<sup>th</sup> August 1993, in her capacity as daughter-in-law of the deceased. She expressed herself to be the sole survivor of the deceased and that the deceased had died possessed of W. Bunyore/Ebusiekwe/367. Letters of administration intestate were made to her on 10<sup>th</sup> June 1994, and a grant duly issued on 23<sup>rd</sup> June 1994. The said grant was confirmed on 22<sup>nd</sup> May 1995 on an application dated 1<sup>st</sup> February 1995. The entire property was devolved wholly upon her. A certificate of confirmation of grant in those terms was issued.
3. On 20<sup>th</sup> March 1996 an application was lodged at the registry by Patrick Ngota Achwoka seeking revocation of the grant made on 23<sup>rd</sup> June 1994 to the administrator. He avers in his affidavit in support of the application that the deceased was his father. He states that the deceased was survived by two sons and one daughter. He explains that the administrator was the widow of his late brother, Augustino Otiende Achwoka, who died sometime in 1989. He avers that the grant ought to be revoked as it was obtained on basis of concealed information. The administrator responded to the affidavit. She concedes that the respondent was her brother-in-law, who was entitled to one half of the estate. She asserts that she was entitled to representation in the estate as an heir. That application was resolved on 20<sup>th</sup> September 1996, when it was ordered that the administrator, Figneta Otiende Achwoka, and the applicant, Patrick Ngota Achwoka, be joint administrators of the estate. The revoke of 23<sup>rd</sup> June 1994 was thereafter revoked.
4. An application was subsequently lodged at the registry on 16<sup>th</sup> August 2012, dated 25<sup>th</sup> July 2012, at the instance of one of the administrators, Patrick Ngota Achwoka, seeking confirmation of the letters of administration made on 20<sup>th</sup> September 1996. In his affidavit in support of the application, he lists himself, his co-administrator and Hellen Semo Oteyo, as the survivors of the deceased by virtue of being son, daughter-in-law and daughter of the deceased respectively. It was proposed that the property known as W. Bunyore/Ebusiekwe/2143 be shared out equally between all three survivors.
5. Curiously another summons for revocation of the grant made in 1993 to Figneta Otiende Achwoka was lodged at the registry by her co-administrator in the grant of 20<sup>th</sup> September 1996, Patrick Ngota Achwoka. Consent orders were made on 15<sup>th</sup> July 2014 following compromise by counsel for the two administrators to revoke the grant of 1993 and to have them appointed joint administrators. There was also an order requiring that the property of the deceased be reverted to the original title W. Bunyore/Ebusiekwe/367, after it had been subdivided into W. Bunyore/Ebusiekwe/2143 and 2144, ostensibly following the confirmation orders of 22<sup>nd</sup> May 1995. A fresh grant of letters of administration intestate was issued to the two administrators on 22<sup>nd</sup> September 2014.
6. A fresh confirmation application was lodged at the registry, dated 14<sup>th</sup> June 2016, at the instance of Patrick Ngota Achwoka. He avers that the deceased had been survived by four individuals, being himself, his co-administrator, Hellen Semo Oteyo Achwoka and Sophia Mutalo. The relationship between the four and the deceased is not stated. He proposed distribution of W. Bunyore/Ebusiekwe/367 as follows: (a) Patrick Ngota Achwoka 1.5 hectares, (b) Hellen Semo Oteyo Achwoka - 1.5 hectares, (c) Figneta Otiende Achwoka – 0.75 hectare, and (d) Sophia Mutalo – 0.75 hectare.
7. Figneta Otiende Achwoka, the co-administrator filed an affidavit in protest on 30<sup>th</sup> August 2017, proposing a different mode of distribution. She asserts that the deceased had three children – being her co-administrator, Hellen Semo Oteyo Achwoka and her late husband, Augustino, Otiende Achwoka. She explained that Sophia Mutalo was a daughter of her late husband Augustino with another woman. She proposes that the estate be distributed equally between herself, her co-administrator and her sister-in-law to the exclusion of Sophia Mutalo. .

8. When the matter was placed before me on 7<sup>th</sup> November 2018, it transpired that the Patrick had died, and I confirmed the surviving administrator Figneta as the sole administrator. As the applicant in the application dated 14<sup>th</sup> June 2016 had died that application had abated. I directed that the surviving administrator applies afresh for confirmation of the estate. When the matter came up again the surviving administrator sought to have the application of 14<sup>th</sup> June 2016 revived and the property distributed as per her protest of 30<sup>th</sup> August 2017.

9. I have considered the matter. I agree that the confirmation application of 14<sup>th</sup> June 2016 can be revived, and orders on distribution made on it. It is common ground that the deceased had three children. The estate ought therefore to be distributed equally amongst them as required by Section 38 of the Law of Succession Act, cap 160 Laws of Kenya. For those who have died the property should devolve to their respective estates.

10. The orders that I am moved to make in the circumstances are as follows:

**a. That I shall treat the confirmation application dated 14<sup>th</sup> June 2016 as still valid and subsisting, and I shall proceed to make confirmation orders based on it;**

**b. That there are two grants still valid in this matter and two applications for confirmation of grant, I shall make orders with respect to the said grants and applications to pave way for disposal of the application dated 14<sup>th</sup> June 2016;**

**c. That grant made on 20<sup>th</sup> September 1996 is hereby revoked and the application dated 25<sup>th</sup> July 2012 is hereby marked as spent ;**

**d. That the application dated 14<sup>th</sup> June 2016 is hereby allowed with the result that the grant made on 7<sup>th</sup> November 2018 is hereby confirmed in the terms proposed in paragraph 7 of the supporting affidavit;**

**e. That the shares in the property due to the late Patrick Ngota Achwoka and the late Augustino Otiende Achwoka shall pass to their respective estates to be distributed in succession causes commenced in their respective estates; and**

**f. That any party aggrieved by these orders has twenty-eight days to move the Court of Appeal appropriately.**

11. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF JUNE, 2019**

**W MUSYOKA**

**JUDGE**