



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CIVIL APPEAL NO. 30 OF 2018

(CORAM: HON. R.E. ABURILI - J)

IN THE MATTER OF THE ESTATE OF THE LATE VITALIS OMOLO AHENDA

AND

IN THE MATTER OF AN APPEAL

BETWEEN

RUTH ADHIAMBO OMOLO.....APPELLANT

VERSUS

CHARLES ODUOR OMOLO.....RESPONDENT

(From the Appeal of the ruling and or orders of Hon. Olando T.M. dated 7th November 2018 at Siaya Principal Magistrate's Court, Succession Cause No. 84 of 2018)

JUDGMENT

1. This Appeal challenges the ruling of the T.M. Olando, SRM dated 7th November 2018 in Siaya PM's court **Succession Cause No. 84 of 2018**.
2. The Ruling was in respect of summons for confirmation of a grant issued to Charles Oduor Omollo and Ruth Adhiambo Omolo (Petitioners) and Administrators of the Estate of the Late Vitalis Omolo Ahenda (deceased).
3. The Ruling followed directions given by the trial court on 12/10/2018 that both parties file submissions on the mode of distribution of Land Parcel No. Siaya/Nyadorera 'A' 3380, as it appeared that Land Parcel No. Siaya/Nyadorera/A/148 and Siaya/Nyadorera A/3462 and savings at Post Bank had no issues as between the beneficiaries.
4. The deceased Vitalis Omolo Ahenda had 2 wives Jane Aluoch and Jane Anyango Omolo (deceased). The 1st wife had 5 children whereas, the second house had 3 children, 2 sons and one daughter.
5. The 1st house comprises Jane Aluoch Omolo, Ruth Adhiambo Omolo, Daniel Omondi Omolo, Samuel Okumu Omolo, Susan Aoko Omolo, Lucy Atieno Omolo. The 2nd house was comprised of Benta Awino Omolo, Michael Omondi Omolo and Charles Oduor Omolo.
6. The Appellant's contention from her submissions made in court on 29/4/2019 are that the trial magistrate in awarding Parcel No. Siaya/Nyadorera A/3380 to the Respondent and his brother failed to take into account the fact that the said parcel of land was purchased by her late father and her mother before the Respondent's mother was married to the appellant's father and that his wishes were that the said parcel of land be shared equally between the appellant's mother Jane Aluoch Omollo and her brother Charles Oduor Omollo.
7. That the said land had 12 rental houses but that Charles (the Respondent destroyed the said houses because he wanted the land for himself. She therefore prayed that this court divides the said land between the two households and not to leave it to Charles Oduor Omollo alone.
8. The appellant also complains in her grounds of appeal that the trial court failed to consider the fact that the estate had girls who were

rightfully entitled to the share of the estate.

9. I have considered the appeal as presented and the oral arguments by the appellant. I have also considered the impugned ruling. I note that albeit the estate had 8 beneficiaries, only 3 beneficiaries were given shares in the estate comprising Land Parcel No. Siaya/Nyadorera/148; Siaya/Nyadorera 'A' 3462 and Siaya/Nyadorera/A 3380 namely, Jane Aluoch Omolo, a Michael Omondi Omollo and Charles Oduor Omollo.

10. Albeit the Certificate of Confirmation granted savings at Post Bank to be shared equally amongst all the beneficiaries, it is not indicated how much money was held in the said account.

11. The appellant and her mother claim that the Land Parcel No. 3380/Siaya/Nyadorera had rental houses and that therefore more valuable than the other two parcels which are swampy. They demanded that each household gets a share of the same.

12. The trial court however, gave the suit parcel to the 2nd household, sons to enable them put up homes thereon.

13. The rest of the beneficiaries are not mentioned in terms of their shares in the parcels of land and even the schedule of distribution gives to Jane Aluoch and Ruth Adhiambo Omolo other items like welding machine, electric posho mill, a car battery charger, driller, 7 bicycles, 12 cows and 9 sheep, to the exclusion of all the other beneficiaries yet there is no evidence that the other beneficiaries had renounced their rights to a share in the estate.

14. In the affidavits filed by the 2 Petitioners in support of summons for confirmation of the grant, the appellant herein proposed that her mother gets Siaya/Nyadorera A' 148 and another parcel (unnamed) while the Respondent and his brother Michael Omondi Omolo should get some unnamed parcel and Parcel No. Siaya/Nyadorera/A/3462.

15. Concerning Parcel No. Siaya/Nyadorera/A/3380, she proposed that it be shared amongst all beneficiaries and so was the savings at Post Bank.

16. However, the Certificate of Confirmation of grant and the Ruling on distribution of the estate does not even name the other beneficiaries and neither does it even apportion the monies held at Post Bank capable of being distributed equally amongst 'all' the beneficiaries, which 'beneficiaries' are not listed in the certificate of confirmation of the grant.

17. Furthermore, the Certificate of Confirmation of grant dated 7/11/2018 is not consistent with the Ruling dated the same day for reasons that the items listed as welding machine, electric posho mill, car battery charger, driller, 7 bicycles, 12 cows and 9 sheep were never disclosed in the said ruling and therefore this court does not fathom where those assets came from for inclusion in the Certificate of Confirmation of the Grant.

18. In my humble view, that alone renders the certificate of confirmation of grant issued on 7/11/2018 fatally incompetent and amenable to being set aside and vacated.

19. And as earlier stated, the 'all' beneficiaries stated to be entitled to the savings at Post Bank Kenya are not listed which is also a fatal omission since the record shows that there are 9 beneficiaries of the estate of the Late Vitalis Omolo Ahenda.

20. In the absence of affidavits or consent by the rest of beneficiaries renouncing their entitlement to the estate, the distribution of the estate as per the Ruling of 7/11/2018 and Certificate of Confirmation dated 7/11/2018 cannot stand. It must be set aside which I hereby do and direct that the estate of the deceased Vitalis Omolo Ahenda shall be subjected to fresh distribution involving all the beneficiaries without exception and in accordance with the law. Accordingly, this appeal succeeds and the same is allowed.

21. The Ruling dated 7/11/2018 is hereby set aside and the Certificate of Confirmation of grant dated 7/11/2018 is hereby vacated.

22. As the dispute is between family members, I order that each party shall bear their own costs. The rehearing of the summons for confirmation of grant shall be heard by any other judicial officer other than Hon. T.M. Olando who made the orders which are impugned.

23. Orders accordingly.

Dated, signed and Delivered at Siaya, this 26th day of June 2019.

R.E. ABURILI

JUDGE

In the presence

The appellant in person

The Respondent in person

CA: Brenda and Modestar