



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 554 OF 2013

IN THE MATTER OF THE ESTATE OF RAPHAEL TAGO OCHILO

(Alias TAGO OCHILO) – DECEASED

PERES AGUTU ONGONGE.....1ST PETITIONER

ABSOLOM ODUOR.....2ND PETITIONER

AND

WILBERFORCE OCHIENG OBJECTOR/APPLICANT

RULING

The Objector, **WILBERFORCE OTIENO OCHIENG**, has brought an application for the revocation of the Grant of Letters of Administration which had been issued to the Petitioners, **PEREZ AGUTU ONYANGO** and **ABSOLOM ODUOR**.

1. He further asked the court to cancel the registration of the Estate Land **L.R. EAST UGENYA/RAMUNDE/698**, in the Petitioner's names, so that the said property should revert to the name of the deceased, **RAPHAEL TAGO ACHILO** *Alias TAGO ACHILO*.
2. It is his contention that the proceedings which were used to obtain the Grant were defective.
3. He also pointed out that the Petitioners had concealed the fact that he too, was a beneficiary, thus fraudulently causing him to be disenfranchised.
4. The Applicant has provided the court with documents which show that he is a son of **OCHIENG OCHILO**, who was a brother of the deceased.
5. He described himself as a step-son of the deceased.
6. He also described himself as a brother of **ABSOLOM ODUOR**.
7. In answer to the application, **ABSOLOM ODUOR** pointed out that he was not a beneficiary to the Estate.
8. If indeed Absolom Oduor is a brother of Wilberforce Otieno Ochieng, that would imply that the two of them were at par as far as their respective relationship is, with the deceased, Raphael Tago Ochilo.
9. It was for that reason that I understand Wilberforce to be complaining that he had been left out when the Estate of the deceased was being distributed, whilst Absolom was given a share of the Estate.
10. I have carefully perused the record of the proceedings in this matter.
11. In the Grounds of Opposition dated 10th September 2018, the Petitioners stated that Absolom Oduor was not a beneficiary of the Estate of the late Raphael Tago.
12. However, there is a Certificate of Confirmation of Grant dated 13th November 2014 which indicates that the parcel of land **L.R. NO. EAST UGENYA/RAMUDE/698** was to be transferred to **JULIUS OBONYO TAGO**.

13. Secondly, there is another Certificate of Confirmation of Grant dated 13th May 2016, indicating that the parcel of land **L.R. NO. EAST UGENYA/ RAMUNDE/698** was to be divided equally between **PERES AGUTU ONGONGE** and **ABSLOM ODUOR**.

14. In the affidavit to support the Summons for Confirmation of Grant sworn on 14th April 2016, Peres Agutu Ongonge and Absolom Oduor described themselves as being a daughter and son, respectively, of the deceased.

15. Furthermore, in her affidavit sworn on 25th January 2016, Peres Agutu Ongonge made it clear that the deceased was survived by two children namely;

(a) Peres Agutu Ongonge, and

(b) Absolom Oduor.

16. Attached to that affidavit was a Sale Agreement for **L.R. NO. EAST UGENYA/RAMUNDE/698**, which cited the Sellers as being Peres Agutu Ongonge and Absolom Oduor.

17. If Absolom was not a beneficiary of the Estate of the late Raphael Tago Ochilo, he could not have been one of the two persons who then sold off the property constituting the Estate of Raphael.

18. He was deemed a beneficiary because he was cited as an “*Adult Son*” of the deceased.

19. In so far as Absolom is not a son of the deceased, I find that the Petitioners misled the court by citing him as they did.

20. I therefore find that if the court were made aware of the fact that Absolom was not a son of the deceased, it is possible that the court may either have rejected the Petitioner’s application for confirmation of the grant or may have considered the justice of distributing the Estate to more or to fewer persons. In other words, I have no idea how the court would have distributed the Estate if it had been made aware that;

(a) Absolom was not a son of the deceased, and that

(b) Absolom had a brother called Wilberforce.

21. But I am sure about one fact, that the son of your father’s brother is not a step-brother. He is thus not a step-son of your father.

22. Therefore, ordinarily, such a person, (who is a nephew) to the deceased does not rank *pari pasu* to the children of the said deceased.

23. Accordingly, just because Absolom received a benefit from the Estate of the deceased, does not, of itself, give an entitlement to Wilberforce to claim a benefit.

24. I also find that it is only a person who has a legal right to receive a benefit from the Estate of a deceased person who can say that he was disenfranchised if he was denied such an entitlement.

25. If a person does not prove that he had a legal right to share in the Estate, he cannot be said to have been disenfranchised, if he does not receive anything from the Estate.

26. By virtue of being a nephew of the deceased, the Applicant did not become entitled to a share in his Estate. And he has not demonstrated any particular reason in law or in fact that would entitle him to a share in the Estate.

27. Therefore, although the court was misled to believe that Absolom Oduor was a son of the deceased thus influencing the manner in which the Estate was distributed, I find that the said distribution has not been shown to have been prejudicial to the Applicant, as he was not disenfranchised.

28. There was no material fact that was concealed from the court concerning the Applicant. I so find because it has not been shown that the existence of a nephew of the deceased was material to the determination about the mode of distribution.

29. The Applicant has failed to demonstrate that he was an heir to the deceased, who should therefore have been entitled to a share of the Estate.

30. Accordingly, the application dated 2nd April 2018 is devoid of merit, and it is therefore dismissed with costs to the Petitioners.

DATED, SIGNED and DELIVERED at KISUMU

This 25th day of July 2019

FRED A. OCHIENG

JUDGE