



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO.46 OF 2013

IN THE MATTER OF THE ESTATE OF:

DAVID BONZO OYUGI.....DECEASED

BETWEEN

EVERLINE AWINO

ROBERT BARASA.....PETITIONERS/ RESPONDENTS

AND

PHILIP OMANI KUCHURU

PHILIP ONDEKO OKAYA.....OBJECTORS/APPLICANTS

RULING

1. On 19th January 2017 the objectors herein filed an objection to the confirmation of the grant herein. The objection was premised on the following grounds:
 - a) That they purchased part of the estate of the deceased from the deceased.
 - b) That by the time the deceased died, he had not transferred the land to them.
 - c) That the petitioners did not include them as beneficiaries.
 - d) That there was a court decision on the same and which the petitioners did not appeal against.
2. The application was opposed on the following grounds:
 - a) That the objectors are not heirs of the deceased;
 - b) That the objection offended Order 40 Rule 6 of Probate and administration Rules.
 - c) That the objectors have not availed evidence of purchase of the said land.
3. On the 29th January 2019, the parties sought to have the application disposed of by way of written submissions.
4. Rule 40 sub Rule 6 of Probate and Administration Rules (which was wrongly cited as Order 40 Rule 6 of Probate and administration Rules) provides:

Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.

In my view the want of form cannot be used to defeat a claim where the claim comes out clearly. The objection in this case cannot fail due to want of form.

5. I have perused the evidence affidavits and the submissions and I make a finding that there is a decision of the court in favour of the objectors. This decision was not appealed against. The rights of the objectors were therefore conclusively determined and cannot be an issue in this succession cause.

6. The objection is therefore sustained and the petitioners are hereby ordered to include the objectors in the list of beneficiaries and be given the portion they had purchased as had been determined by the court.

7. Costs of this application be borne by the petitioners.

DELIVERED and SIGNED at BUSIA this 26th day of September, 2019

KIARIE WAWERU KIARIE

JUDGE