



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 316 OF 1999

IN THE MATTER OF THE ESTATE OF ROSE JOAN APONDI(DECEASED)

BETWEEN

JEFFREY PETER ORIWA ONEKO

MAUREEN ACHIENG ONEKO.....OBJECTORS/APPLICANTS

AND

AYUB MESHACK OCHIENG.....PETITIONER/RESPONDENT

JUDGMENT

Introduction

1. ROSE JOAN APONDI (*hereinafter referred to as deceased*) died sometimes on 25th September, 1998. Deceased's estate comprised of:

- 1) Land Parcel No. SUNA EAST/WASWETA 1/6954
- 2) Land Parcel No. SUNA EAST/WASWETA 1/7393
- 3) Land Parcel No. SUNA EAST/WASWETA 1/6046
- 4) HARAMBEE SACCO SOCIETY SHARES
- 5) SUGAR CANE LEASED AT MIGORI
- 6) KENYA NATIONAL ASSURANCE POLICY NO. 0929075 AND 1409663

2. The deceased was survived by her children **JEFFREY PETER ORIWA ONEKO** and **MAUREEN ACHIENG' ONEKO** (*hereinafter referred to as the Objectors*).

3. **AYUB MESHACK OCHIENG**, (*hereinafter referred to as the Petitioner*) who is brother to the deceased was on 15th July, 1999 issued with Grant of Letters of Administration Intestate to administer the deceased's estate.

4. A Certificate of Confirmation was issued in favor of the Petitioner, absolutely on 13th January, 2000.

5. By summons dated 13th May, 2019, the Objectors pray for revocation of the grant of Letters of Administration and the registration of the Petitioner as the registered owner of Land Parcel No. SUNA EAST/WASWETA 1/6954; Land Parcel No. SUNA EAST/WASWETA 1/7393 and Land Parcel No. SUNA EAST/WASWETA 1/6046. The application is supported by the grounds on the face of the application among others that the Petitioner allocated all the assets to himself thereby totally disinheriting the children of the deceased. The application was supported by an affidavit sworn on 13th May, 2019 by **JEFFREY PETER ORIWA ONEKO** in which he reiterates the grounds on the face of the application.

6. In his response which was in the form of letter to M/s Omayya & Company Advocates for the Objectors, the Petitioner does not deny that he allocated himself all the assets of the deceased to himself thereby totally disinheriting the children of the deceased.

Analysis and Determination

7. **Section 84** of the Law of Succession Act Chapter 160 Laws of Kenya (*the Act*) provides;

Where the administration of the estate of a deceased person involves any continuing trust whether by way of life interest or for minor beneficiaries or otherwise, the personal representatives shall unless other trustees have been appointed by a will for the purpose of the trust, be trustees thereof.

8. The deceased did not appoint trustees for her children. Therefore, once the Court appointed the Respondent as administrators of her estate, invariably, he was a trustee of the continuing trust of the minors' beneficial interest in the deceased's estate and not the absolute owner of deceased's assets.

9. The continuing trust of the minors' beneficial interest in the deceased's estate ceased when they became of age and the Respondent was by virtue of Section 83 (j) of *the Act* obligated to complete the administration of the estate in their favour a duty he failed to carry out.

10. From the foregoing, I am persuaded that the Objectors have made out a case for revocation of the Letters of Administration Intestate and the Grant of Letters of Administration Intestate issued in favour of the Respondent.

11. Section **38** of *the Act* deals with instances where intestate has left a surviving child or children but no spouse as in this case and provides that:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

12. Evidence on record has disclosed that the Objectors are the only children of the deceased.

Disposition

13. In the result, and from the foregoing analysis, the court finds that the objection has merit and it is allowed in the following terms.

1) JEOFFREY PETER ORIWA ONEKO and MAUREEN ACHIENG' ONEKO are hereby appointed joint administrators of the deceased's estate

2) The registration of the Petitioner as the registered owner of Land Parcel No. SUNA EAST/WASWETA 1/6954; Land Parcel No. SUNA EAST/WASWETA 1/7393 and Land Parcel No. SUNA EAST/WASWETA 1/6046 is hereby revoked

3) The whole of deceased's estate which comprises of Land Parcel No. SUNA EAST/WASWETA 1/6954; Land Parcel No. SUNA EAST/WASWETA 1/7393 and Land Parcel No. SUNA EAST/WASWETA 1/6046 shall devolve upon JEOFFREY PETER ORIWA ONEKO and MAUREEN ACHIENG' ONEKO in equal shares

4) Each party shall bear its own costs of these objection proceedings

DELIVERED AND SIGNED AT KISUMU THIS 31ST DAY OF OCTOBER 2019

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistant - Amondi/Okodoi

For Petitioner/Respondent - Present in person

For Objectors/Applicants - N/A