



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**SUCCESSION CAUSE NO. 734 OF 2015**

**IN THE MATTER OF THE ESTATE OPONDO OMBEWA (DECEASED)**

**BETWEEN**

**FRANCIS ABWAO.....OBJECTOR/APPLICANT**

**AND**

**JEREMIAH OWINO OPONDO..... PETITIONER/RESPONDENT**

**JUDGMENT**

**Introduction**

1. **OPONDO OMBEWA (deceased)** died sometimes on 18<sup>th</sup> July, 1972. His estate comprised of **Land Parcel No. SOUTH GEM/ULAMBA/669 (suit property)**.
2. Letters of administration were issued on 28<sup>th</sup> October, 2015 to **JEREMIAH OWINO OPONDO (Petitioner)** who described herself as grandson to the deceased.
3. The grant was subsequently confirmed in favour of the Petitioner and a Certificate of Confirmation of Grant was issued on 28<sup>th</sup> October, 2016.

**Application**

4. By summons dated 21<sup>st</sup> November, 2016 filed on 22<sup>nd</sup> November, 2016, **FRANCIS ABWAO (Objector)** seeks revocation of the Letters of Administration issued to the Petitioner on 28.10.15 and confirmed in his favour on 28.10.16.

**Objector's' Case**

5. The Objector told court his late mother **DOMTILA OKELLO ABWAO** was the only child of the deceased. He stated that his mother begot two sons, himself and his late brother **JECTONE LENYA ABWAO** and that the Petitioner and all the other persons named in the chief's letter dated 29.06.15 and filed in court on 10.07.15 are unknown to him and have no relationship with the deceased. He stated that his claim to the suit property was limited to his grandfather's share.
6. **DISMAS ORWA ABIERO** stated that the deceased was brother to his father whereas the Petitioner was son of **OPONDO OPIYO** who is from his village. It was his evidence that he knew the Petitioner's grandmother one Langó whom he denied was married to the deceased.

**Petitioners' Case**

7. **JEREMIAH OWINO OPONDO (the Petitioner)** stated that he was son of **OPONDO OPIYO**. It was his evidence that his grandmother **LANGÓ OPIYO** and the deceased died before he was born but that he was informed that his grandmother Langó Opiyo had been inherited by the deceased and that that was the basis for his claim over the deceased's estate. In cross-examination by Mr. Kowinoh, advocate for the Objector, Petitioner confirmed that he was aware that the deceased begot one daughter **DOMTILA OKELLO ABWAO** who is the Objector's mother.
8. **CHRISPIN YUGA OGOLLA** confirmed that he was aware that the deceased begot one daughter **DOMTILA OKELLO ABWAO** who

is the Objector's mother. He stated that **LANGÓ** the Objector's grandmother begot two sons **OLUOCH OPIYO** and **OPONDO OPIYO** the objector's mother. He further stated that after the death of **LANGÓ**'s husband, she was inherited by the deceased and did not beget any children with him.

### **SUBMISSIONS BY THE PARTIES**

#### **Objector's submissions**

9. The objector holds the view that being the son of the deceased's only daughter, he is entitled to deceased's estate under the provisions of Section 39 of the Law of Succession Act Chapter 160 Laws of Kenya (*the Act*). He faulted the Petitioner for failing to disclose this fact when he obtained the grant and for falsely presenting himself as deceased's grandson and for fraudulently submitting to court names of persons that were not related to the deceased.

#### **Petitioner's submissions**

10. The Petitioner concedes that the Objector's mother was the only child of the deceased. He also concedes that his grandmother **LANGÓ** had two sons **OLUOCH OPIYO** and **OPONDO OPIYO** by the time she was inherited by the deceased. He urged the court to order that both parties administer the estate which is jointly owned by his uncle **OLUOCH OPIYO** and Objector's grandfather.

#### **Analysis and Determination**

11. I have considered the evidence on record and submissions filed on behalf of both parties.

12. **Section 39 of the Law of Succession Act** stipulate that the net intestate shall devolve to the kindred of the intestate in order of priority in the following terms: -

**(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-**

**(a)father; or if dead**

**(b)mother; or if dead**

**(c)brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none**

**(d)half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

**(e)the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.**

**(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund."**

13. It is on record that the Objector's mother **DOMTILA OKELLO ABWAO** was the only child of the deceased. The Objector is deceased's grandson in the third degree of consanguinity and takes priority over the Petitioner who claims to be a step-grandson of the deceased.

14. The Petitioner concedes that he was aware that the Objector was son of deceased's only daughter **DOMTILA OKELLO ABWAO**. This fact was neither disclosed at the time of filing this cause nor at the time of confirmation of the grant and this leads to the conclusion that the grant was obtained by the making of a false statement and by concealment from the court of something material to the case and ought to be revoked.

15. The *suit property* is registered in the joint names of the deceased and Petitioner's uncle **OLUOCH OPIYO**. The evidence on record has not disclosed the immediate family members of Objector's deceased brother **JECTONE LENYA ABWAO** and **OLUOCH OPIYO** to enable the court make a decision as to who ought to administer the estate of the late **OPONDO OMBEWA** and the late **OLUOCH OPIYO**.

#### **Disposition**

16. Consequently, I am satisfied that the Objector has made out a case for revocation of the grant issued to the Petitioner. As a result, it is hereby ordered **THAT**:

**a) Letters of administration issued on 28<sup>th</sup> October, 2015 to JEREMIAH OWINO OPONDO (Petitioner) are hereby revoked.**

**b) The subsequent Certificate of Confirmation of Grant issued to the Petitioner on 28<sup>th</sup> October, 2016 is correspondingly revoked.**

