



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

SUCCESSION CAUSE NO. 71 OF 2015 (P&A)

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

IN THE MATTER OF THE ESTATE OF THE LATE MICHAEL OBEL OCHOLA ALIAS MIKAEL OBEL OCHOLA

AND

IN THE MATTER OF SUMMONS FOR CONFIRMATION OF GRANT

AND

IN THE MATTER OF PROTESTS FOR CONFIRMATION OF GRANT

BETWEEN

MAURICE ONYANGO OTIENO.....1ST PROTESTOR

FRANCIS OTIENO HANDA.....2ND PROTESTOR

JACOB APEL MBAGO.....3RD PROTESTOR

APPOLO OTIENO SUMBA.....4TH PROTESTOR

GERTRUDE ADHIAMBO OTIENO.....5TH PROTESTOR

VERSUS

FRANCIS OOKO MWANZIA OBEL.....ADMINISTRATOR

ISAYA OMONDI OBEL.....ADMINISTRATOR

JUDGMENT

1. This judgment is in respect of the estate of the deceased **MICHAEL OBEL OCHOLLA** alias **MIKAEL OBEL OCHOLA** who died intestate. Initially, a grant of letters of administration intestate was issued and confirmed in favour of Maurice Onyango Otieno the first protestor herein on 13/11/2015 by Hon. J. Makau J vide Certificate of Confirmation of Grant dated 13/11/2015 in respect of Land Parcel **No. Uholo/Ugunja/255**.
2. The Succession cause was initially filed at Siaya PM's court registered as **Succession Cause No. 1 of 2015** but it was transferred to the High Court for hearing and determination on 30/10/2015.
3. According to the Chief's letter dated 19/1/2015 written by **George O. Opondo** Chief West Uholo location, Ugunja sub-county, the deceased **Michael Obel Ochola** hailed from his location and that the deceased was only married to one wife and were blessed with children, **Maurice Onyango Otieno** and **Charles Omondi Otieno**. He stated that owing to her advanced age, the widow **Gertrude Adhiambo Otieno** had proposed her son **Maurice Onyango Otieno** to petition for grant of letters of Administration intestate.
4. The Succession cause which was filed on 27/3/2015 was done by **Maurice Onyango Otieno** as per P&A 5 form duly signed, with the Petitioner also disclosing that he was the only surviving son and the asset left behind was Land Parcel No. Uholo/Ugunja/255 measuring 1.8 ha valued about Kshs. 100,000/=.No liabilities were disclosed.

5. The deceased Michael Obel Ochola died on 25.5.2006 aged 58 years old.
6. The grant was issued on 16/3/2015 in favour of the Petitioner Maurice Onyango Otieno by Hon. M.S. Kimani, Resident Magistrate, and Siaya Law Courts as per P&A 41 Form in the trial file.
7. The Petitioner then applied for summons for confirmation of the said grant on 12/11/2015 and he filed consent from Gertrude Adhiambo Otieno his mother and Charles Omondi Otieno his brother.
8. On 29/12/2015 before the grant could be confirmed, one Francis Obel through his advocate Ragen O. Sagana applied for copy of proceedings claiming to be the son to the late Michael Obel Ochola (deceased). However, in the summons for confirmation of grant dated 12/11/2015, the Petitioner also filed an affidavit disclosing that the deceased died intestate survived by **Gertrude Adhiambo Otieno** widow; Maurice Onyango Otieno - son, Charles Omondi Otieno - son; and Dennis Oduor Otieno - son – deceased and he deposed that the whole of Uholo/Ugunja/255 measuring 1.8 ha was to be given as a whole to him.
9. On 10/6/2015, the Resident Magistrate after interacting with the Petitioner and other alleged beneficiaries, declined to confirm grant **“until such a time the Petitioner does a full and honest disclosure as regards his other kins and or relatives.”**
10. Upon the application by the Objectors through R.O. Sagana Advocate, on 31/3/2016 the learned Hon. Justice J. Makau revoked the grant issued in favour of the then Petitioner Maurice Onyango Otieno and in its place, appointed **Francis Ooko Mwanzia Obel and Isaya Omondi Obel** as joint administrators. The above orders revoked the confirmation of grant issued on 13/11/2015 in favour of Maurice Onyango Otieno.
11. In the intervening period, Maurice Onyango Otieno was enjoined by this court from subdividing, leasing, transferring, constructing, cultivating or conducting any dealings on Land Parcel No. Uholo/Ugunja/255.
12. On 1/11/2016, the new administrators **Francis Ooko Mwanzia Obel and Isaya Omondi Obel** applied for confirmation of the new grant reissued to them. They also prayed that the estate of the deceased Michael Obel Ochola namely, Land Parcel No. Uholo/Ugunja/255 be distributed to **Francis Ooko Mwanzia Obel** and **Isayah Omondi Obel** in equal shares as tenants in common.
13. The Petitioners swore a lengthy affidavit in support of the summons for confirmation of grant, castigating Maurice Onyango Otieno for allegedly fraudulently obtaining a grant and having it confirmed in his favour by lying to the court that he was the deceased’s son, contrary to the facts that led to the court eventually revoking the grant issued in his favour and re-issuing it in favour of the Administrators /Petitioners herein.
14. The Petitioners also claimed that the said **Maurice Onyango Otieno** had transferred the said title to Uholo/Ugunja/255 from the deceased’s name into his names on 17/12/2015, immediately he allegedly had the grant confirmed in his favour.
15. On 3/11/2016 by an application dated 1/11/2016 the said Maurice Onyango Otieno filed an application seeking to injunct the administrators **Francis Ooko Mwanzia** and **Isaya Omondi Obel** from dealing with the land **Uholo/Ugunja/255**. He also sought to bar the distribution of the land parcel **No. Uholo/Ugunja/255** on the ground that before doing so, they must note the **purchasers’ interest** of one Jacob Sumba by granting them 3 acres from **Uholo/Ugunja/255**.
16. In the said application, **Maurice Onyango Otieno** claimed that he had observed that some of the beneficiaries had commenced disposing the estate without noting the purchaser’s interest of the applicant and that the administrators had intermeddled with assets forming part of the estate of the deceased by failing to comply with a court order requiring them to apply for confirmation within a reasonable time but not later than 6 months and that instead, they were negotiating with prospective buyers to dispose of the estate on 15/11/2016.
17. After the administrators had filed summons for confirmation of the reissued grant, Maurice Onyango Otieno filed an affidavit of protest against confirmation of grant and that is the gist of this judgment.
18. Maurice Onyango Otieno swore an affidavit on 14/11/2016 claiming that in 1969, his grandfather **Jacob Sumba** (deceased) entered into a sale of land agreement for purchase of Land **No. Uholo/Ugunja/255** measuring 3 acres with the deceased **Michael Ochola** alias **Mikael Obel Ochola**. That his said grandfather took possession of the said land and that **his father** also entered on the land and he (the protestor) was born on the said parcel of land and that the deceased **Michael Obel Ochola** never raised any objection but died before effecting a transfer in favour of Jacob Sumba.
19. That owing to the old age of the Protestor’s father, he appointed the Protester to take charge and follow up the issue of final transfer or passing over the suit property into the family name.
20. That he approached blood relatives of the Late Michael Obel and met one Lucas who informed the Protester that the deceased was not survived by any widow or children hence his family met the family members of Michael Obel on 11/10/2014 and the said family officially appointed the Protester to petition for letter of administration of the deceased’s estate as a beneficiary.
21. That the Area Chief gave him a letter granting him authority to take it to the Late Michael Obel’s sister and that when he approached the surviving sister of the deceased, she refused to get involved saying she was married and that efforts to locate Michael Obel’s children proved futile.
22. That it was on the strength of the above and the Chief’s authority that he petitioned for a grant of letters of administration intestate which was granted but later revoked on 31/2/2016.

23. According to the Protestor, Maurice Onyango Otieno, the Late Michael Obel, after selling the suit land to Jacob Sumba, used the same title to guarantee a loan to Patrick Opondo Okeyo who defaulted and the land fell for auction and the Protestor's father filed SRMCC 95/94 and having a beneficial interest in the said land succeeded in stopping the sale.

24. That after the Protestor Maurice Onyango Otieno had petitioned for grant, he cleared the outstanding loan on the land and got a discharge. He therefore sought for orders that this court do protect them as purchasers and enable them recover substantial amounts spent in commencing this petition and discharging the suit property.

25. Another Protestor, **Francis Otieno Handa** filed an affidavit in protest against confirmation of the grant in favour of the administrators. The affidavit filed on 6/6/2017 discloses that the Protestor is the administrator (by limited grant) of the estate of **Gabriel Handa Odera** who died on 16.5.2002. That the disputed portion No. Uholo/Ugunja/255 was bought by his father **Gabriel Handa Odera** from **Omoro Abiero** albeit it is registered in the name of Michael Obel Ochola. That the said land borders Uholo/Ugunja/252 registered in the name of **Gabriel Handa Odera**.

26. That during adjudication process, part of Uholo/Ugunja/252 was erroneously made part of Uholo/Ugunja/255 as per the sketch diagram FOH-4.

27. That both parties knew the error which regrettably could not be rectified in time as the name of the deceased on his Identity card was different from the name on the title and that during efforts for rectification, the deceased became evasive and was at times behind bars in jail and he only returned while very sick and died before the correction was done.

28. That the 2nd Protestor's father continued working on the said land and in 1997 he was approached by the area community and he consented to sinking of a borehole thereon.

29. That in 1995 the land **Uholo/Ugunja/255** was advertised by the National Bank of Kenya for auction over a Kshs. 500,000/= loan and that upon such realisation that the land was to be sold, his father **Gabriel Handa Odera, Jacob Apel** and **Apollo Otieno Sumba** filed suit to stop the sale and also lodged a caution on the title.

30. That in 2014 after the death of **Michael Obel**, his relatives held a meeting and resolved to let Maurice Onyango Otieno (1st Protestor) obtain a grant to follow up on the discharge of the charge from National Bank.

31. That in January 2015, Lucas Ooko a nephew of Omoro Abiero summoned the 2nd Protestor's family to the Area Assistant Chief complaining that the land was their ancestral land but the Assistant Chief dismissed the claim.

32. That the dispute has remained unresolved but that the land Uholo/Ugunja/255 belongs to Gabriel Handa Odera and it should be subdivided and handed over to the family as it was purchased by his late father.

33. The third Protestor **Jacob Apel Mbago** also swore an affidavit filed in court on 6/6/2017 claiming that on 7/8/1978 and 21/5/1979 the Late Michael Obel Ochola sold land parcel No. Uholo/Ugunja/255 to him (Protestor) at a consideration of Kshs. 4,915 but that a transfer was not effected in his favour as the said Michael Obel Ochola was in jail.

34. That the deceased clearly demarcated for him the portion sold and the 3rd Protestor took possession and has been cultivating it and is possession thereof.

35. That in 1991, Opondo Okeyo was granted a loan by National Bank of Kenya on the strength of the title to the said land. That Opondo Okeyo defaulted and the land was advertised for sale. That to save the said land, the 3rd Protestor, Apollo Otieno Sumba and Gabriel Handa Odera filed suit vide Siaya SRMCC 95/94 seeking restraining orders stopping the sale and that 17/3/1995 they also lodged a caution on the subject title, leading to the National Bank of Kenya abandoning he said sale by auction.

36. That during that time, the now deceased proprietor was not around and he could not be traced but when his wife died, she was buried on a portion of the said land, which was meant for the deceased Michael Obel Ochola, who never attended his wife's burial.

37. That the deceased only returned in 2005 in bad health and shelter less so the 3rd Protestor with Appollo Otieno Sumba and Gabriel Handa Odera built him a house on his portion of land and occasionally gave him food. That the deceased died in 2006 and his remains were buried on his portion of land.

That when the deceased returned and his health was poor, he could not transfer title hence after his demise, the 3rd Protestor, Appollo Otieno Sumba's family and Gabriel Handa Odera's family and kins of the deceased met and resolved to authorise Maurice Onyango Otieno to pursue and redeem the title for the subject land from the Bank so that succession could be done.

38. That the deceased's kins, Leonard Ochieng Ooko and Lucas Imbaya Ooko confirmed to the meeting that the deceased's sons' whereabouts could not be traced hence Maurice Onyango Otieno proceeded to petition for a grant of letters of administration intestate in respect of the estate of the deceased Michael Obel Ochola.

39. That the 3rd Protestor after purchasing the portion of land of Uholo/Ugunja/255 occupied it and works on it ever since **hence the administrators should subdivide it and transfer to him his portion as he has utilized and lived on the said land without any complaint from the deceased's or any of his kins todate.**

40. The other people namely, **Appollo Otieno Sumba** hereinafter called **P-4** and **Gertrude Adhiambo Otieno** hereinafter called **P-5** swore their respective affidavits filed in court on 18/7/2017 in support of the protest against confirmation.

41. On the part of Appollo Otieno Sumba, he deposed that they started staying in the suit property in 1968 after their late father Jacob Sumba being financed by P4 the Deponent) bought 3 acres of the said land in 1969 from Michael Obel.

42. That the Deponent then worked in Kampala Uganda, and would only periodically remit payments through his father, Jacob Sumba for the purchase of the said portion. That the agreement was written in an exercise book and that his father took possession of the said land and built thereon his home and **P-4** also built his house on it and has buried 3 of his dead children on the said land. ***That nobody has ever objected to their occupation of and use of the said land.***

43. That his father **Jacob Sumba** died before getting a transfer of title from **Michael Obel**, of the portion he purchased so P-4 took up the matter with Michael's immediate family.

44. That **Michael Obel** used to be at large looking for jobs in towns for close to 10-15 years and on his return he died and was buried on the suit land but that the Protestor learnt that title had been charged to National Bank of Kenya for a loan of Kshs. 500,000/=, so **P-4** mobilized his brothers **Jacob Apel Mbago**, **Gabriel Handa** and filed Civil Suit No. 95/94 at Siaya and obtained an injunction stopping the sale of the land.

45. That they also looked for the deceased **Michael Obel** who returned in 2006 sickly and died and that, that is when he, **P-4** appointed **P-1 Maurice Onyango Otieno** to take charge of the property into his name after failing to get children of the deceased **Michael Obel** and that after getting a grant, **P-1 Maurice Onyango Otieno** cleared National Bank of Kenya loan and had a discharge issued on the title. **P-4** He urged the court to issue orders protecting purchasers and to enable them recover substantial amounts spent in the matter.

46. In the Affidavit of **Gertrude Adhiambo Otieno P-5** sworn on 14/7/2017 supporting the protest against confirmation, she deposed in support of **P-4 Appollo Otieno Sumba** her husband saying that he bought the suit land from the deceased **Michael Obel Ocholla**, and paid for the land through his father and they moved in and built a homestead thereon in 1978 and that her 3 children born died and were buried on the said land but that he fifth born son Maurice Onyango Otieno had taken up the matter because **Appollo Sumba** was ailing.

47. That the Late **Michael Obel** was very slippery and failed to transfer the land despite promises and he vanished for long ad when he returned but had no one to care for him so **P-5** took him in and cared for him and gave him meals daily jointly with the wife of **Jacob Apel**. That the deceased lamented how his relatives had neglected him and even failed to notify him of his wife's demise. That the deceased never objected to their stay on the land as he had sold to her husband and they had occupied it since the 1970s.

48. The Petitioners were granted leave to file a further affidavit which they duly filed on 20/7/2017 sworn by **Francis Ooko Mwanzia Obel**, responding to the affidavits sworn by **Maurice Onyango Otieno**, **Gertrude Adhiambo Otieno** and **Appollo Otieno Sumba** and reiterating the contents of his affidavits filed on 15/1/2016 and 1/11/2016 in further response.

49. In the response, the 1st Petitioner/Administrator castigates the Objectors/Protestors for turning from son and widow of the Late Michael Obel Ochola to purchasers. He deposed that even then, there was no evidence that the protestors had purchased any land from Michael Obel Ochola, as required by law and that in the documents of acknowledgement of monies, none of them is an acknowledgement by the deceased Michael Obel Ochola, the land purportedly sold is not indicated, no land reference number, no size for sale, no purchase price indicated and that the objectors have no authority to claim under **Jacob Sumba** and that the claim for purchasers' interest in the 1968 sale agreement is statute barred as **Michael Obel** died in 2006, 38 years after the purported purchase.

50. That his late father only welcomed the family of **Michael Sumba** as licences on a portion of Uholo/Ugunja/255 measuring 0.3 acres and only recently did they trespass by relocating and building a new home.

51. That if the objectors had any legitimate claim as purchasers, they would petition for a grant as creditors not as widow and sons of the deceased and turn around as purchasers. That the objectors' fraudulent scheme was assisted by **George Opondo** the Area Assistant Chief to deprive the Petitioners/Administrator of their late father's land and inheritance.

52. The administrator denied that the protestors discharged the title of land which had been used as security to secure a loan from National Bank of Kenya. He also deposed that as the objections herein related to a dispute in land, title to land, among others, this court has no jurisdiction to enforce such claims.

53. That the objectors have not proved to be beneficiaries to the suit land hence the administrators should be allowed to administer the estate.

SUBMISSIONS

54. The parties signed a consent on 22/1/2019 agreeing to adopt the sworn affidavits filed as evidence and to file written submissions canvassing the objection proceedings. The Parties' advocates filed written submissions which they also highlighted orally on 10/6/2019.

55. Mr. Ochanyo Advocate for the 1st Objector & holding brief for Mr. Ken Omollo Advocate for the 2nd and 3rd Objectors submitted reiterating the written submissions filed on 22/3/2019 and the affidavits filed by the protestors and their witnesses as reproduced above.

56. Counsel added that the 1st Objector objects pursuant to Section 66(d) of the Law of Succession Act which allows creditors in the event of intestacy of a deceased person to conduct succession.

57. Further, that claims by third parties to the Estate need not file separate suits. Reliance was placed on **Simon Kamundi V Tabitha Gatiria Maingi Succ. Cause 432/2010 (Meru High Court)**.

58. Regarding the claims by the 2nd and 3rd Objectors, counsel reiterated that the land was sold by **Michael Obel Ochola** to **Jacob Mbago** in 1978 & 1979 at a consideration of Kshs. 4,915 and that the buyer took possession of the purchased portion and has continued to cultivate it, it is demarcated and trees are planted.

59. The rest of the oral submissions by Mr Ochanyo repeat the written submissions and reiterate the sworn affidavits by the Protestors hence there is no benefit of reproducing them here. Counsel urged the court to order that objectors be given their respective portions of land parcel No. Uholo/Ugunja/255.

60. Opposing the protest, Mr. Musungu Advocate for the Administrators submitted relying on his written submissions filed on 22/2/2019 and replying and further affidavits sworn by the 1st administrator Francis Ooko. He submitted that this was a case of neighbours trying to defraud the owner of the land.

61. Counsel urged the court to determine the 3 issues **first**, that the court has no jurisdiction to determine the question of ownership of land or title to land. **Secondly**, that the objector's claim of purchaser's interest should be dismissed on the ground that no sale agreement was annexed identifying the size of the land purchased, and that documents annexed are not attested contrary to Section 3(3) of the Law of Contract Act. **Thirdly**, counsel for the Administrators urged the court to find that the claim is unsustainable because the claim accrued 48 years and 37 years respectively hence it was statute barred and contrary to the law of limitation.

62. Finally, Mr. Musungu submitted that the objection has no basis as the objectors had not come to court with clean hands as the 1st objector initially petitioned as a beneficiary/dependant and had now turned into a purchaser hence he perjured himself.

63. Counsel submitted that this is the only land that the administrators have hence they will be prejudiced if the objection is allowed. He urged the court to dismiss the objection/protest and confirm the grant in favour of the 2 administrators.

64. The statements of witnesses for the protestors were not on oath hence they are not evidence to be considered by the court.

DETERMINATION

65. I have taken the liberty to review the entire evidence by way of affidavits and the trial record on the history of the succession dispute herein. ***The only issue for determination in my humble view is whether the protests as filed and as argued have any substance and merit.***

66. It is not in dispute that the 1st protestor initially petitioned for grant of letters of administration intestate of the estate of the deceased **Michael Obel Ochola** claiming that he was the **deceased's son** and he included among the beneficiaries, his mother **P-5 Getrude Anyango Otieno** as the deceased's widow and his brother **Charles Omondi Otieno** as son of the deceased.

67. In addition, the 1st protestor was in his possession a letter dated 19/1/2015 written by **George Opondo**, Assistant Chief of West Uholo location Ugunja sub-location ***introducing them as sons and widow to the deceased Michael Obel Ochola.***

68. However, after the grant was issued in favour of the first protestor herein and while awaiting confirmation, the Resident Magistrate observed that there must be other beneficiaries so she declined to confirm the grant.

69. It later turned out to be that **P-4** claims that he is the purchaser of the land in question from the deceased, and that he did so through his deceased father Jacob Sumba.

70. P-4 happens to be the father to **P-1** Maurice Onyango Otieno whereas **P-5 Getrude Adhiambo Otieno** is the mother to **P-1**. All the protestors claim purchaser's interest.

71. When the matter was transferred to the High Court, **P-5** and **Charles Omondi Otieno** consented to the P-1 getting the grant confirmed in his favour on account that they were the only three sole beneficiaries of the estate of the deceased **Michael Obel Ochola**. The letter by the Assistant Chief never introduced them as purchasers and the affidavits sworn were clear that they were widow and only surviving children of the deceased.

72. The grant in question was later revoked by Hon. J. Makau J and reissued in favour of the Administrators herein who were found to be bonafide biological children of the deceased **Michael Obel Ochola**.

73. It also turns out from the evidence on record that in fact, the wife of the deceased **Michael Obel Ochola** predeceased him and was buried on the said parcel of land Uholo/Ugunja/255.

74. Further details are that when **P-1** applied for confirmation of grant issued to him on 16/3/2015, he swore an affidavit on 2/6/2015 and at paragraphs 5 and 6, he deposed that he **had a child who needed school fees urgently and that he school fees urgently and that he had found a buyer of the said land and that as he was the only beneficiary, there was no dispute as to ownership hence the grant should be confirmed in terms of the schedule giving him the whole share of the land.**

75. By an Application dated 12/1/2016 the administrators herein successfully petitioned the High Court for revocation of the grant issued in favour of P-1 and the grant was re-issued in their favour. They also successfully demonstrated that they were the only surviving children of

the deceased **Michael Obel Ochola** and that the **P-1** and his mother **P-5** and **Charles Omondi Otieno** were impostors and fraudsters. The Administrators also proved to the satisfaction of the court that the protestors herein are not in any way, other than being neighbours to Uholo/Ugunja/255 related by blood to the Administrators.

76. This court observes that after the grant issued to **P-1** was revoked and re-issued to the Administrators herein, **P-1** did not file any appeal. Neither did **P-2** seek to be enjoined or file an appeal challenging the order of revocation of the grant.

77. No sooner had the administrators been issued with the grant as the bonafide administrators and beneficiaries of the estate than **P-1** jumped into the fray again and protested the confirmation of the said grant, now claiming that the land in question was sold by **Michael Obel Ochola** to his grandfather **Jacob Sumba** (deceased) and that they reside on the said land.

78. In addition, **P-3**, who is the father on **P-1** jumped in the arena saying he is the one who bought the land through his father **Jacob Sumba**. **P-1** also claimed that the immediate family members of **Michael Obel Ochola** agreed to authorise him to petition for a grant because the deceased's children could not be traced.

79. What therefore emerges is clear that the **P-1** clearly perjured himself as he could not claim to be the son of the deceased Michael Obel Ochola in an affidavit and later turn around and claim to be claiming the land on behalf of his late grandfather who allegedly bought it through his father **Appollo Otieno Sumba**. Furthermore, **P-1** has no grant of letters of Administration to purport to claim the estate of his late grandfather. Neither is his father **Appollo Otieno Sumba** an administrator of the estate of his late father - **Jacob Sumba** hence the two protestors have no locus in these proceedings.

80. On these grounds alone, I would strike out and dismiss the protests filed by **P-1**, **P-2** and **P-4** without delving into the merits of their claims which I find suspicious, dishonest and fraudulent to say the least. And whereas claims by purchasers may, in certain circumstances be entertained in a succession cause so as to save on time and money, and as stipulated in Section 66 of the Law of Succession Act, nothing prevented the protestors herein from citing the beneficiaries or close relatives of the deceased Michael Obel Ochola to take out letters of administration.

81. Such close relatives at that time included the sister of the deceased who was said to be married and allegedly refused to get involved in the issues at hand and told the first protestor that her brother's children could not be found.

82. This court further finds that if the claim as purchasers was genuine, then the protestors could have adduced in evidence sale of land agreement(s) which are verifiable and properly attested and signed by both parties to the alleged agreements.

83. The documents annexed were challenged successfully by the administrators in a sworn affidavit to the effect that they are not agreements as they are not attested by a witness as stipulated in Section 3 of the Law of Contract Act; the purported sale of land agreements are not evidenced in writing, there is no signature of the Late Michael Obel Ochola; the purported acknowledgements of receipt of monies are not by Michael Obel Ochola; the said annexures do not make any reference to the property Uholo/Ugunja/255; the annexure do not make any reference to the size of the property allegedly purchased; the objectors are not privy to the alleged sale agreements by Jacob Sumba and had not exhibited authority by way of a grant to claim under him.

84. The above depositions by the 1st Administrators were not controverted in any way by the protestors.

85. I have also examined the documents referred to as sale of land agreements by the protestors. They are written in Dholuo language and no one attempted to translate them into the language of the court before filing them. The language of this court is English and Kiswahili. In the absence of a translated version of the purported sale of land Agreements, coupled with the non-controverted contentions by the administrator that the purported sale agreements are not attested, do not identify the land or the size thereof or the total purchase price, I have no hesitation but to refuse and reject the protestor's claims that they or their relatives purchased the respective portions of land from the deceased Michael Obel Ochola.

86. I however, decline to entertain the submission by the Administrators that the claim is statute barred for reasons that the protestors seem to invite this court to find that they have been in continuous, open and uninterrupted occupation of the suit land for all the period since 1978-1979 which presupposes a claim for adverse possession. Such a claim can only be lodged and be entertained by the Environment and Land Court as contemplated in Article 162(2)(b) of the Constitution and Section 13(1) and (7) of the Land Act.

87. Further, the protestor's claim that they are purchasers and have been in occupation and cultivation and even discharged the charge is not within the jurisdiction of this court to order for subdivision of the land in their favour.

88. Article 165 (5)(b) of the Constitution expressly bars the High Court from hearing and determining disputes where jurisdiction to hear and determine such disputes is exclusively reserved for the Environment and Land Court or the Employment and Labour Relations Court or the Supreme Court.

89. Therefore, as jurisdiction is everything, without which this court would be acting in vain, I decline to determine any issues related to the use and occupation and title to land.

90. Accordingly, I find and hold that the claims by the protestors and their witnesses is not within the jurisdiction of this court. The protests are therefore dismissed.

91. I must however observe that the 2nd protestor **Francis Otieno Handa** does not claim that he or his father bought the land from the deceased Michel Obel Ochola. Instead, he alleges that his father is the one who bought the land from **Gabriel Handa Odera** which latter

bought the land from another person **Omoro Abiero** who had no title to the land in issue. It follows that as there is no evidence that the deceased sold land to any of these people in the chain described above, this court is unable to find for the 2nd Protestor Francis Otieno Handa **P-2** that he or his family are bonafide purchasers for value.

92. Similarly, with regard to the 3rd Protestor, his purported sale of agreement is not in the languages of the court. The documents cannot be relied on by this court to determine rights of protestors. Those are interests which can be competently balanced and considered by the Environment and Land court.

93. It follows that this court cannot accede to the prayers that the court do order for subdivisions and transfer of the land parcel no. Uholo/Ugunja/255 in favour of the protestors.

94. The protestors are at liberty, subject to the law of proof and limitation of actions to initiate appropriate proceedings, before the Environment and Land Court for hearing and determination and only sue the Administrators herein in their capacity as Administrators of the estate of the deceased Michael Obel Ochola.

95. Having found that there is no dispute that the Administrators herein are the only persons rightfully entitled to a grant of letters of administration of the estate of **Michael Obel Ochola** alias **Mikael Obel Ochola**, and as the protestors have failed to prove their respective claims of purchasers against the administrators under section 66 of the Law of Succession Act, I hereby proceed and dismiss **ALL** the protests as filed challenging the Summon for Confirmation of grant issued in favour of the Administrators.

96. **I allow the Summons for Confirmation of grant and proceed to confirm the grant issued in favour of the Administrators herein FRANCIS OOKO MWANZIA OBEL and ISAYA OMONDI OBEL to administer the estate of the deceased MICHAEL OBEL OCHOLA alias MIKAEL OBEL OCHOLA namely, UHOLO/UGUNJA/255 in equal Shares as per the Schedule filed, and in accordance with the law.**

97. As parties are neighbours and in order to promote their harmonious coexistence, I order that each party shall bear their own costs of these protracted succession proceedings.

Orders accordingly.

Dated, signed and Delivered at Siaya, this 29th Day of October 2019.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Ochanyo Advocate for the first Protestor and h/b for Mr. Ken Omollo Advocate for the 2nd and 3rd Protestors

2nd and 3rd Protestors are present

N/A for the Administrators

CA: Brenda and Modestar