



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY
SUCCESSION CAUSE NO.563 OF 2014
FORMERLY OYUGIS SUCC. CAUSE NO.226 OF 2012

IN THE MATTER OF THE ESTATE OF:

SELEMIA OPIYO SWA DECEASED

AND

SIPROSA AMOLLO AKAKAAPPLICANT

RULING

[1] Grant of Letters of Administration Intestate respecting the estate of the late **Selemia Opiyo Swa** (deceased) who died on the 7th October 1990, was issued to **Siprosa Amollo Akaka** (petitioner) on 11th December 2017 by the magistrate's court at Oyugis in Succession Cause No.226 of 2012.

On 20th June 2019, the petitioner filed the necessary summons for confirmation of grant in which she indicated that the deceased, her brother-in-law, was survived by herself, his daughter-in-law, **Linet Anyango Mboya** and his grandson, **Paul Otieno Bala**, who is now deceased. She therefore proposed that the only asset available for distribution i.e. land parcel **No.West Kasipul/Kanyango Kokal/514**, be shared equally between herself and the deceased's daughter-in-law (Linet).

[2] The daughter-in-law was of a different opinion. She filed an affidavit of protest dated 15th August 2019 in which she protests against the proposal by the petitioner of having the property shared equally between herself and the petitioner

Her main reason for the protest was that the petitioner had been given her own portion of land by the deceased. She therefore requested that the mode of distribution suggested by the petitioner be reviewed and agreed upon by all beneficiaries before being adopted by the court.

The petitioner filed a replying affidavit to the protest dated 19th November 2019, in which she discloses very pertinent facts relating to the relationship between the deceased and herself and the protestor cum objector. These facts clearly imply that the deceased was survived by seven children (i.e. two sons and five daughters) and that one of the children is since deceased. That, both the petitioner and the objector are related to the deceased only by marriage.

[3] Being related to the deceased only by marriage, neither the petitioner nor the objector could apply or to purport to apply for grant of letters of administration intestate respecting the estate of their in-law in priority to his blood relatives such as his surviving children.

Any of those surviving children be it sons or daughters stood first in priority to both the petitioner and the objector in applying for necessary grant of letters of administration and also in the distribution of the estate property.

As it is now, the petitioner and the objector are proposing or intend to propose a mode of distribution which will favour them and invariably exclude the actual or proper beneficiaries of the estate. Such scenario should not be allowed to happen at the behest of the petitioner or the objector or both in their quest to grossly abuse the court process.

[4] The courts exist to do justice and if justice is to be done in this case, it is necessary that this court invokes its powers under **section 73** of the **Probate & Administration Rules** which provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

In that regard, the petitioner's application for confirmation of grant is dismissed and the grant issued to her by the magistrate's court on 11th

December 2017, on which the summons for confirmation of grant was anchored is hereby revoked with an order that a fresh grant be issued forthwith in the names of one surviving son of the deceased and one surviving daughter of the deceased whether or not married.

[5] If none of the children is alive, then the fresh grant should issue to any surviving son-in-law and daughter-in-law of the deceased.

For the avoidance of doubt, this is an intestate succession. Therefore, the grant of representation shall not confer power to any of the administrators to distribute any capital assets or to make any division of property, unless the grant has been confirmed as provided in **Section 71** of the **Law of Succession Act** (See, **Section 55 (1)** of the **Act**).

Section 71 (1) of the **Act** provides that:-

“After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets”.

[6] Herein, those whose names shall be provided as the new administrators shall take out the necessary summons for confirmation of grant within six months from the date of issue or any shorter period that they may deem necessary.

Ordered accordingly.

J.R. KARANJAH

JUDGE

27.11.2019

[Delivered and dated this 27th day of **November, 2019**]