



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO. 748 OF 2015

**IN THE MATTER OF THE ESTATE OF: PASKALIA NYAMWANDA, JANE ANYANGO & CATHORINA MINYERE -
DECEASED**

AND

JOYCE ADHIAMBO OMONDI.....1ST APPLICANT

MAURINE AWUOR OMONDI.....2ND APPLICANT

VERSUS

CLARICE AWINO OWINO.....RESPONDENT

RULING

1. The summons dated 13th November 2017 seeks that this court orders a retrial of this matter involving the estate of **JANE ANYANGO, PASKALIA NYAMWANDA** and **CATHORINA MINYERE** where this court by a ruling dated 1st August 2017 ordered that the grant be nullified only to the extent that the distribution left out persons acknowledged as being duly entitled to a share. Further the respondents were directed to surrender the certificate of grant issued for cancellation and to file a fresh proposed mode of distribution taking into account the share due to the applicant.

2. The 1st applicant, **JOYCE ODHIAMBO OMONDI** is described as the only surviving next of kin to the Deceased persons being the only daughter to **JANE ANYANGO** and step child of **PASKALIA NYAMWANDA** and **CATHORINA MINYERE** (all widows of late **HEZRON WAINDI**, who was the 1st applicant's biological father.

The deceased were being wives of **HEZRON OGWENO** were joint owners of parcel **NO. KABUOCH/KACHIENG/515**.

3. The respondent (**CLARICE AWINO OWINO**) wants to do full succession of her late husband's estate before his estate can be distributed yet the 1st applicant is the rightful heir of the estate of her three parents.

4. The 1st applicant deposes that there was no concealment of facts since the chief's letter was availed and the search showed **JOHN OGOLLA**'s shares. She further points out that there is no relationship between the applicants and the respondents.

5. Mr. Kanyangi for the respondents submitted that the court had directed the applicants to file a revised mode of distribution which they never did. He argues that actually the asset from proposed distribution was registered in the names of 4 people and not three, and he urged the court to uphold its ruling of 1st August 2017. Counsel also urged this court to adopt the proposed or mode of distribution which is in draft form.

Mr. Kanyangi pointed out that the main findings were left as they were.

6. Mr. Obach in response submitted that the late **JOHN OGOLLA OWINO** was the husband to the applicant who is not related to Joyce or any of the three named deceased and she rightfully left out **JOHN OGOLLA** because he had his own family and dependants and it would be improper to join him in the distribution.

7. Really I fail to appreciate what requires retrial here – I think the issues raised were addressed in the ruling. If the applicants feel aggrieved by the ruling of 1st August 2017 then the cure does not lie on a retrial but an appeal.

8. The applicants must therefore decide what they wish to do – either appeal or make a fresh proposal on the mode of distribution. I find the

mode of distribution proposed by the respondents rather skewed and no explanation is given why 7.0 hectares should go to **CLARICE** while **JOYCE** only gets 2.78 hectares. The applicants must file a fresh proposed mode of distribution within 21 days hereof in default to which the court will use its own discretion in making distribution.

9. Consequently the application lacks merit and is dismissed with costs to respondent.

Delivered and dated this 19th day of March, 2018 at Homa Bay

H.A. OMONDI

JUDGE