



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

SUCCESSION CAUSE NO. 9 OF 2016

IN THE MATTER OF THE ESTATE OF:

MUNGA BONYO ABOK.....DECEASED

AND

JACKTONE OWUOR MUNGA.....APPLICANT

VERSUS

JOSEPH OWUOR MUNGA.....RESPONDENT

RULING

1. When **MUNGA BONGO ABOK** died on 18th May, 1980, **JOSEPH OKELLO MUNGA** applied for and obtained grant of letters of administration of his estate in his capacity as the son.

He thereafter got the land **NO. CENTRAL KASIPUL/KAMUMA/837** registered in his name and that of **BERNARD ODHIAMBO MUNGA** at a share of 4.0 Hectares and 1.4 Hectares respectively.

2. In so doing the Respondent (**JOSEPH OKELLO MUNGA**) shut out all the other beneficiaries of the estate who are listed as:-

- a. MONICA CHIAGA MUNGA** - 2nd Wife
- b. MOSES OPIYO MUNGA** - Son
- c. JACKTONE OWUOR MUNGA** - Son
- d. ROSE AKOTH ODHIAMBO** - Daughter in-law
- e. MARGARET OYOLLA AKOKO** - Daughter in-law
- f. JUDITH ACHIEN’G OCHIENG** - Daughter in-law
- g. MARGARET AKELO MUNGA** - Daughter in-law
- h. BERNARD ODHIAMBO MUNGA** - Grandson

3. The applicant **JACKTONE OWUOR MUNGA** has urged this court to order for revocation of the grant issued to **JOSEPH** and to rescind and/or nullify the transfer and registration of **LR NO. CENTRAL KASIPUL/ KAMUMA/837** in the names of new owners. He urges that the register be rectified by deleting the names of the respondent.

4. The matter proceeded ex-parte as the respondent/petitioner did not attend court for hearing after refusing to sign notice for hearing when served by the Assistant Chief.

5. **JACKTONE** testified as PW1 and informed this court that his late father had 2 wives namely **MILKA AIRO MUNGA** (deceased) who had 4 daughters and 6 sons; and **MONICAH CHIAGA MUNGA** (alive) who had 1 daughter and 4 sons. **JOSEPH** is from the first house yet in his mode of distribution he never shared out any property to the other siblings.

6. **JACKTONE** explained that their late father had 6 parcels of land and had given each wife a portion of land and **JOSEPH** was given a separate parcel for his own use. Further that his mother **MONICAH** was given parcel **NO. CENTRAL KASIPUL/KAMUMA/837** which is infact registered in her name. However the first house took the remaining 4 parcels. His prayer and proposal is that parcel NO.837 should be shared between the two houses pointing out that **BERNARD ODHIAMBO MUNGA** is a son to **MALACH OBONGO** who was from the 1st house.

7. A letter by Senior Chief of North Kanyamkago sub location dated 13/03/2017 indicates that several attempts to have the respondent share his late father's property with other beneficiaries has failed.

8. He also listed the other beneficiaries of the deceased's estate, and urged the court to intervene in the matter.

9. The evidence remains uncontroverted and there is nothing to show that the respondent/petitioner consulted other family members before filing the cause or even embarking on distribution.

10. The application is merited – the respondent concealed material information from the court regarding the status of the 2nd house. Consequently, I order that:-

i. Grant issued to **JOSEPH OKELLO MUNGA** on 8th June 2016, be and is hereby revoked.

ii. The transfer of land parcel **NO. L.R. NO.CENTRAL KASIPUL/ KAMUMA/837** be and is hereby cancelled.

iii. By a copy of this order, the Land Registrar Rachuonyo District Land Registry is directed to rectify the register by cancelling the names of **JOSEPH OKELLO MUNGA** and **BERNARD ODHIAMBO MUNGA** as the registered owners and the same reverts to the names of the registered owner, namely **MUNGA BONYO ABOK** (deceased), until a proper cause is heard and determined.

Delivered and dated this **08th** day of **March**, 2018 at Hma Bay

H.A. OMONDI

JUDGE