



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**SUCCESSION CAUSE NO. 106 OF 2016**

**(CORAM: J. A. MAKAU – J.)**

**IN THE MATTER OF THE ESTATE OF GAMALIEL OTIENO ONYIEGO (DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR REVOCATION OF GRANT BY VINCENT  
OCHIENG NGOLO**

**VINCENT OCHIENG NGOLO.....OBJECTOR/APPLICANT**

**VS**

**LEOCARDIA NGESO ODERA.....PETITIONER/RESPONDENT**

**JUDGMENT**

**1. VINCENT OCHIENG NGOLO**, the Objector/Applicant herein through summons for revocation of grant dated 18<sup>th</sup> November 2016 pursuant to **Rule 1 of the Probate and Administration Rules; Section 76(b) of the Law of Succession Act (Cap 160) Laws of Kenya**, seeks the following orders: -

***(a) The letters of Administration of the estate of the Late Gamaliel Otieno Onyiengo granted to Leocadia Ngeso Odera in this cause be revoked.***

***(b) That the costs of the application be granted.***

**2.** The Application is based on the grounds that the grant was obtained fraudulently by making a false statement as to concealment from the Court, of facts material to the giving of the grant; that the grantee fraudulently presented herself and one Petronilla Obado Otieno as the only surviving beneficiaries to the Estate and failed and/or refused to disclose to the Court that there are other beneficiaries including the Objector/Application herein: that following confirming of the grant the Respondent has now set about disposing the assets of the late which solely consist of the land parcel no. North Gem/Marenyo/960 and that the beneficiaries including the Objector/Applicant are residents on the aforesaid parcel of land with their family and are now facing the serious risk of eviction by the intended purchaser and further relies on his affidavit dated 18<sup>th</sup> March 2016.

**3.** The application is opposed and the Respondent relies on her replying affidavit dated 24<sup>th</sup> March 2017 urging that the Objector/Applicant is her nephew and grandnephew of the deceased. That the deceased's

beneficiaries are the Respondent and her mother.

4. That when the matter came up for directions, in presence of counsel and parties, Court upon hearing both sides, directed that the matter be determined by way of *viva voce* evidence.

**OBJECTOR'S CASE:**

5. The Objector, Vincent Ochieng Ngolo, OW1, gave evidence and called no witnesses. In his evidence he stated that the deceased Gamaliel Otieno Onyiengo whose Estate is subject of this application, is his grandfather, whereas the Respondent Leocadia Ngeso Odera is his aunt and as such he urged he is a beneficiary. He relied on his witness statement dated 12<sup>th</sup> September 2017 (marked PW1's evidence).

6. In the Objector's OW1's statement, he briefly averred that, the deceased's estate consists of solely all that parcel of land known as No. North Gem/Marengo/960 to which grant of letters of administrations was made to the Respondent. He contends that the Respondent failed to disclose that apart from herself and one Petronilla Obado Otieno, there were other beneficiaries to the estate of the deceased who include the grandchild of the deceased who resides on the same land with their families including the objector. He urged the deceased was survived by Objector's father John Ngolo Orwa and his younger sister Leocadia Ngeso Odera. That objector's father was survived by six children who are still alive. That the Petitioner/Respondent notwithstanding being aware of objector's and others existence and presence on the said property, fraudulently stated that the deceased was survived by Objector's grandmother and herself with intention to disinheriting other beneficiaries; that upon confirmation of the grant the Administrator caused the removal of the caution which had been put by John Ngolo Orwa on 7<sup>th</sup> July 1998, despite the Objector's objection, enabling the Petitioner/Respondent to enter and execute agreements of sale of parcel, of the lands to various intended purchasers without the consent of the other beneficiaries. That the beneficiaries and their families occupy the land which the deceased held in trust for them as the family patriarch exercising a fiduciary role for all legitimate descendants who include the Objector / Applicant.

7. During cross-examination of OW1 by Mr. Ooro, Learned Advocate, OW1 testified that he knew Gamaliel Otieno Onyiengo, the deceased as father to the Petitioner and that he knew the Petitioner as daughter to the deceased who also had other children, who are deceased but survived by their children, urging he is claiming interest from Land No. North Gem/Marengo/960 as their ancestral land. He admitted Plot No. Gem/Marengo/965 is his father's land one John Ngolo and is registered in his father's name which he got from the Objector's grandfather Orwa whereas Petitioner's father got Plot No. North Gem/Marengo/960. He urged that Plot No. 965 is in his father's name, he does not live there but his grandmother lives there urging that they are one family and urged he is ready to share Plot No. North Gem/Marengo/965 with the Petitioner. On re-examination, the Objector stated the deceased was survived by the Petitioner and her mother.

8. The Petitioner opposed the Objector's application, gave evidence and called one witness. PW1, Leocadia Ngeso Odera, testified that the deceased herein is her late father as that her mother is called Petronilla Obado. Thus she had 3 sisters; namely Rosemary Otieno (deceased) but survived by two married daughters; Domtilla Awino (deceased) but survived by one child, not married. That the Objector's is son to John Ngolo Orwa, her step-brother, who had married the Petitioner's mother. That John Ngolo Orwa is brother to Petitioner's father, Gamaliel Otieno Onyiengo.

That the land in dispute North Gem/Marengo/960 is in the name of Gamaliel Otieno Onyango, whereas Gem North/Marengo/965 is registered in the name of John Ngolo Orwa, whose lands belonged to her grandfather. That North Gem/Marengo/960 belongs to the family of Gamaliel Otieno Onyieno whereas North Gem/Marengo/965 belongs to John Ngolo Orwa and that John started residing at Plot No. 960 after the death of Petitioner's father without Petitioner's consent. That the Petitioner has transferred part of the land, remaining with a part thereof, which she intends to share to her sister's children as they have right to the land. That the Objector has Land No. North Gem/Marengo/965 which he has sold.

9. On cross-examination of PW1, by M/s Akinyi, Learned Advocate, PW1 testified that when the

deceased married PW1's mother John Ngolo had been born and Petitioner's father took him as his child as the Objector had been residing on Plot No. 960 since 1998 and his parents are buried there. That when Petitioner applied for the grant of letters of administration, she knew the Objector was living on the land No. 960. On re-examination PW1, stated her father took John Ngolo, as a son of his brother and took the wife and the child as his own. That the objector has right over the deceased's land.

10. PW2, Petronilla Obado Otieno, testified the deceased herein was her late husband, with whom she was blessed with the Petitioner and that she knows the Objector as her grandson, whose father is Orwa who was the PW2's first husband. She testified North Gem/Marenyo/960 belongs to father to the Petitioner. She urged the father to the Objector is her son, thus one John Ngolo but he had his own land whose title PW2 could not recall, and the objector has no right on Plot No. 960 as Objector have their own parcel of land. That the objector's family entered the land of the deceased's by force, forcing him to commit suicide.

11. On cross-examination of PW2 by M/s Akinyi, Learned Advocate, PW2 admitted both the Petitioner and John Ngolo are her children. That when PW2 was married by the deceased, John Ngolo was 3 years and used to call the deceased his father. PW2 admitted that they did not disclose all the names of the beneficiaries especially the children of her daughters. She admitted that her two children have equal rights but John had his own land. On re-examination by court, PW2 stated John Ngolo is her son with Orwa. That she was later inherited by father to the Petitioner urging inherited woman has right to inherit the deceased's property. She stated the Objector should move and settle on Plot No. North Gem/Marenyo/1965.

12. Both counsel filed their clients' respective submissions in favour of their respective clients.

13. M/s Behan & Okero Advocates, filed their submissions dated 10/11/2017 on 8<sup>th</sup> December 2017 whereas counsel M/s J.D. Oduor & Company Advocates, filed theirs dated 7<sup>th</sup> October 2017, on 4<sup>th</sup> December 2017. I have very carefully considered the application, the parties evidence, the counsel submissions and authorities relied upon and the issues for consideration can be summed up as follows: -

*(a) Between the Objector / Applicant and the Respondent/Petitioner, who is the rightful person to administer the estate of the deceased Gamaliel Otieno?*

*(b) Whether the Objector / Applicant has demonstrated the grant should be revoked?*

*(c) Whether a widow can inherit the property of a man who inherits her after the demise of her husband and whether a child of an inherited widow can inherit the property of the inheriting man?*

*(d) Whether the Applicant / Objector is entitled to the estate of the deceased?*

14. Before I start handling the issues as framed by counsel and which I have adopted in determining this matter, it is imperative in this matter, to point out the deceased whose estate is subject of this application is said to have passed on 25<sup>th</sup> August, 1998 after the **Law of Succession Act (Chapter 160) Laws of Kenya** had commenced on 1<sup>st</sup> July 1981. The Act clearly spells that the estates of persons dying before the commencement of that Act are subject to the written laws and customs applying at the date of death. **Section 2(1) and 2(2)** provides thus: -

*“2. (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.*

*(2) The estates of persons dying before the commencement of this Act are subject to the written*

*laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”*

**(a) Between the Objector/Applicant and the Respondent/Petitioner who is the rightful person to be the Administrator of the estate of the deceased Gamaliel Otieno?**

15. The deceased Gamaliel Otieno died on 25<sup>th</sup> August 1998 intestate. According to the Petitioner/Respondent in **Form P&A5** and as per her evidence, as well as that of PW2, her mother, the deceased was survived by PW2, his widow and PW1, his daughter. PW1 further testified her deceased sisters, were survived by children, thus nieces to the deceased. She testified that the Objector/Applicant is grandson to the deceased. In determining this issue, this court is enjoined to look at the law as regards the preference on priority in seeking for grant of letters of administration of a deceased estate intestate.

16. **Section 66 of the Law of Succession Act**, provides preference to be given to certain persons to administer deceased’s estate where the deceased died intestate and provides that the court shall, save as otherwise expressly provided, have final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made, but shall without prejudice to that discretion, accept as a general guide the order of preference as set out in the aforesaid section. **Section 66(a)-(d)** provides: -

*“66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-*

*(a) surviving spouse or spouses, with or without association of other beneficiaries;*

*(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;*

*(c) the Public Trustee; and*

*(d) creditors”*

17. **Part VII**, dealing with making of grants under **Rule 26(1) and (2) of the Probate and Administration Rules** provides: -

*“26. (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.*

*(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”*

18. Under **Part V referred under Section 66(b)**, the persons given priority over an intestate are the surviving spouse and children. That where the intestate has unfortunately left no surviving spouse and children, the provisions of **Section 39 of the Law of Succession Act** stipulate the net intestate shall devolve upto the kindred of the intestate in manner of order of priority.

**Section 39(1) and (2) provides –**

*“39. (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.”***

19. In the instant case, parties are in agreement that Gamaliel Otieno Onyiego, the deceased, whose estate these proceedings refer to, inherited Petronilla Obando, PW2, the widow of his late brother Onyiego Orwa and both were blessed with several children, who included the Petitioner/Respondent. The Objector/Applicant was a son of John Ngolo, who was a son of PW2 and Orwa Onyiego, brother to Gamaliel Otieno, and inherited her. PW2 testified Gamaliel took John Ngolo as his son and by extension as step-brother to the Petitioner. In view of the foregoing, the only surviving biological child of the deceased herein is the Petitioner. I therefore find that by virtue of **Section 66 of the Law of Succession Act and Rule 26(1) and (2) of the Probation and Administration Rules**, the Petitioner had ranked in priority to the Objector in seeking grant of letters of administration and did not need to give notice in her endeavour to seek letters of administration to the Objector/Applicant, who is a grandson to the deceased.

**(b) Whether the Applicant has demonstrated that the grant should be revoked?**

20. The Objector/Applicant relies on **Section 76 of the Law of Succession Act** in seeking the grant issued to the Petitioner revoked **Section 76 of the Law of Succession Act** provides: -

***“76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-***

***(a) that the proceedings to obtain the grant were defective in substance;***

***(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***

***(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;***

***(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-***

***(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or***

***(ii) to proceed diligently with the administration of the estate; or***

***(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or***

***(e) that the grant has become useless and inoperative through subsequent circumstances.”***

21. The Objector/Applicant urges the Petitioner/Respondent failed to disclose apart from one Petronilla Obado Otieno, there were other beneficiaries to the estate of the deceased including grandchild of the deceased thus the Objector/Applicant; that the others never participated in the proceedings leading to the confirmation of the grant. The objective did not call evidence from any of the alleged other beneficiaries he was referring to. The Chief's letter filed in this petition dated 24/11/2014 gave the names of the dependants as listed in Form P&A5 which do not include the Objector/Applicant. I therefore find that there was no sufficient evidence from which it can be concluded that the objector/applicant has demonstrated that the grant should be revoked. This ground fails.

**(c) Whether a widow can inherit property of a man who inherits her after the demise of her husband and whether a child of inherited widow can inherit the property of the inheriting man?**

22. From the evidence of PW2, the inherited widow of Orwa Onyiego, by Gamaliel Otieno Onyiego, the deceased, whose estate the proceedings relate, testified that she was married by Orwa Onyiego and were blessed with one child John Ngolo, unfortunately her husband died when John Ngolo was about 3 years. That she was then immediately inherited by Gamaliel Otieno, younger brother to Orwa Onyiego. That in the affidavit in support of the petition, PW2's affidavit and her evidence, PW2 was according to Luo customary laws, upon the death of Orwa Onyiego, inherited by Gamaliel Otieno Onyiego, PW2 claimed that was, "wife inheritance", though she at some times talked of marriage to the deceased. She testified that she left her house with her first husband and the deceased built a house for her, while her house remained at her first husband's land; where she continues to live to date. She further testified that she would only be entitled to the land of the man who inherited her in marriage, if it happened her first husband had not left her land. On her answer as regards the position of her child from the 1<sup>st</sup> marriage, she averred he could not inherit the property of the inheritor, if his father, the husband, left his own property since he could be entitled to such.

23. This Court understood PW2 in her evidence to have been explaining the customary law as she understands it. I agree with the Petitioner's counsel that by virtue of the **Judicature Act**, customary law must be measured on constitutional yard stick. Any custom before being upheld by Court must not be repugnant to the **Constitution**, natural justice and morality. **Article 159(3)(a)(b) and (c) of the Constitution of Kenya 2010** provides: -

***"159. (3) Traditional dispute resolution mechanisms shall not be used in a way that: -***

***(a) contravenes the Bill of Rights;***

***(b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or***

***(c) is inconsistent with this Constitution or any written law."***

Further **Article 2(4) of the Constitution** provides: -

***"2. (4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid."***

24. In dealing with a situation similar to the one before the Court, I have to state that it is imperative that such case be dealt with and be determined on its own facts as there is no case that is similar to another. In the instant case, PW2 was married by elder brother of Gamaliel Otieno Onyiego, who after his death, Gamaliel Otieno inherited her and the two stayed together as man and wife and had several children. There is no evidence that Gamaliel Otieno Onyiego had his family before he moved in with PW2 and inherited her. The evidence is that Gamaliel Otieno had no other wife and no any other placed that he called home, for all purposes and intentions; PW2 and Gamaliel Otieno Onyiego could be treated in no other way other than a spouse to each other, no wonder PW2 would refer to herself as inherited and/or married wife at certain times in her evidence.

25. In view of the above and in view of the provisions of **Section 2(2) of the Law of Succession Act**, providing the law applicable after the commencement of the **Law of Succession Act**, with effect from 1<sup>st</sup> July 1981, on matters regarding succession, the law applicable is the **Law of Succession Act**. I will find the customary law do not apply in the instant cause as the deceased herein died after the **Succession Act** came into force. As regards then successions matters involving persons who died before the commencement of the **Law of Succession Act**, the customary law may be applied. Nevertheless, I am of the view that a customary law which provides that an inherited widow cannot inherit the property especially land of the inheriting man, to be a good law except in a situation where her deceased husband left her no property. That if that position would be allowed to stand, without exception, in my view that would be repugnant to the Constitution, justice and morality. I similarly find and hold that any customary law which stipulates that a child of an inherited widow cannot inherit the property especially land of the inheriting man to be a good law except in a situation where the child's biological father left him no property or land, otherwise such customary law, without exception would in my view be repugnant to the constitution, justice and morality. I find and hold so, as the customary law is clearly concerned about the welfare of the widow and a child as its purpose is to ensure amongst others, that the inherited widow and a child are provided for and as at the same time it supports the principle against double enrichment by the inherited widow and her child, in cases where the wife inheritor had his own legal wife and children.

**(d) Whether the Applicant/Objector is entitled to the Estate of the Deceased?**

26. The facts of this case presents a simple yet interesting scenario. The Objector/Applicant is a nephew of the Petitioner/Respondent. That the mother of PW1, the Petitioner, thus PW2 is grandmother to the Objector/Applicant OW1. The Objector's father John Ngolo was nephew to Gamaliel Otieno Onyiego, who was younger brother to father to John Ngolo, who he took as his child. OW1, in his evidence asserts that the deceased voluntarily assumed parental responsibility towards his father John Ngolo and recognized him as his own child upon inheriting his mother PW2, after his father had died. The **Law of Succession** clearly and loudly defines who is a child in the **Law of Succession Act**. **Section 3(2) of the Law of Succession Act** provides: -

***“(3) A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.”***

27. PW1 in her evidence referred to the Objector/Applicant's father, the Late John Ngolo as her step-brother, whereas PW2 testified that the Objector's father is her own son. She added when the deceased inherited her, the Objector's father was a minor and the deceased voluntarily assumed parental responsibility over the Objector's father. He referred to the Objector's father as his child and treated him as such. In view of the evidence on record, I find that the Objector/Applicant's late father was child to the deceased in view of provisions of the Act; and therefore the Objector/Applicant, being son to John Ngolo and applying the rule of substitution of a grandchild for his or her parent in cases of intestacy, where the parent dies before the intestate is distributed, is known as Principle of Representation. I therefore find that the Objector/Applicant is entitled to the estate of the deceased and can as a grandchild inherit directly from the grandfather as his own father would have done had he survived the deceased herein, as he is the one appearing directly on behalf of his father as regards his share. I find and hold that the Objector/Applicant is a beneficiary to the estate of the deceased by virtue of being a grandchild through his father who was a child to the deceased by virtue of **Section 3(2) of the Law of Succession Act**.

28. Having come to that conclusion, I have then to consider what share the Objector/Applicant is entitled to vis-a-viz the other beneficiaries. There is evidence on record and which is admitted by all parties that the Objector/Applicant's father John Ngolo was given his father's share being North Gem/Marenyo/965, as the father to the Petitioner got North Gem/Marenyo/960. That PW2 is still settled on North Gem/Marenyo/965. PW1, testified North Gem/Marenyo/960 is registered in her father's name as the Objector's father's land, which is registered in his name, is North Gem/Marenyo/965. That each of the two brothers thus the Late Gamaliel Otieno and Orwa Onyiego got their respective shares from their late father. I find that there is no dispute that the Objector got their own land, however in or about 1998 John Ngolo left his land, North Gem/Marenyo/965, forcefully entered and settled on North Gem/Marenyo/960,

provoking the deceased, to get annoyed and commit suicide. The occupancy of part of the North Gem/Marenyo/960 by John Ngolo and his family was against the wishes of his step-father Gamaliel Otieno and adverse to his interest. That John Ngolo and his family did not get consent of the deceased or the Petitioner and her mother to occupy the deceased's land. They left their share of inheritance to occupy the land of the deceased. The Objector stated that he was willing to share North Gem/Marenyo/965 with the Petitioner but this Court, is not right now, dealing with the estate of John Ngolo and cannot entertain the Objector/Applicant's suggestions as it is not an issue before this Court right now.

**29. Section 42 of the Laws of Succession Act provides: -**

***“42. Where-***

***(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or***

***(b) property has been appointed or awarded to any child or grandchild under the provisions of Section 26 or Section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”***

**30.** I note in the instant case the Objector/Applicant's father got his share from his family as the deceased did and have taken that into account and though no suggestion on mode of distribution has been put forward by the respective parties, I am accordingly guided by **Section 38 of the Law of Succession Act**. I would include and not exclude the inherited wife of Gamaliel Otieno notwithstanding that she is catered for and still settled on parcel land Gem North/Marenyo/965 in the name of her son, father to the Objector herein, and being a share given to Objector's father. The Objector/Applicant's father got his share of his land from his biological father and that is where the Objector/Applicant is supposed to settle. I have also considered that the Objector's/Applicant's family had been on a portion of North Gem/Marenyo/960 now for about 20 years since 1998, through adverse possession but not by way of entitlement. I have found and it has been established that the deceased's family as such has held part of the parcel of land in trust for the Objector/Applicant. I propose in view of the size of the land and as the Objector and his family had been catered for through their father, a portion of land from the deceased's estate be awarded to them limited to where their homes are.

**31. The Upshot is that the Objector/Applicant's summons for revocation of the grant partially succeeds and I proceed to make the following orders: -**

***(a) The summons dated 18<sup>th</sup> Nov 2016 seeking revocation of the grant is dismissed.***

***(b) I declare the grant of Letters of Administration was issued to the rightful person, thus Leocadia Ngeso Odera, the Petitioner.***

***(c) The beneficiaries in the cause are Leocadia Ngeso Odera and her sisters children on one side and the deceased's inherited wife.***

***(d) Petronilla Obado Otieno, the inherited widow by Gamaliel Otieno Onyiego who had no other wife and though settled on the share of her 1<sup>st</sup> husband North Gem/Marenyo/965, played a role similar to that of the spouse to the deceased who had no other wife. I therefore for that role award 0.5 an acre from the deceased's estate.***

***(e) The Objector/Applicant is awarded 0.5 an acre limited to the area where his buildings and his relatives are situated and if any buildings outside 0.5 acres to be forfeited to the Petitioner.***

***(f) The Petitioner and her nieces are awarded to the balance of the land thus 1.5 acres or thereabouts.***

***(g) That as the parties are related, I order each party to bear its own costs.***

**DATED AND SIGNED AT SIAYA THIS 12TH DAY OF APRIL 2018.**

**HON. J. A. MAKAU**

**JUDGE**

**DELIVERED IN OPEN COURT.**

**In the presence of:**

**Mr. Lugeno for the Objector/Applicant**

**Mr. Ooro for the Petitioner/Respondent**

**HON. J.A. MAKAU**

**JUDGE**