



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**SUCCESSION CAUSE NO. 159 OF 2011**

**IN THE MATTER OF THE ESTATE OF OBUYA ARAKA SIANGO (DECEASED)**

**BETWEEN**

**PRISCAH SARANGE OBUYA.....PETITIONER/APPLICANT**

**AND**

**DANIEL OBUYA ARAKA.....RESPONDENT**

**RULING**

1. This matter concerns the estate of Obuya Araka Siango of Manga/Raitigo who died on 19<sup>th</sup> May 2007.

It is not disputed that he had two wives. Priscilla Mogoi Obuya (“Priscilla”) who is the mother of Daniel Obuya (“Daniel”), the respondent and the petitioner, Priscah Sarange Obuya (“Priscah”). Priscah had seven children with the deceased Henry Nyabuto Obuya, Elijah Rioga Obuya, Kennedy Nyandoro Obuya, Joshua Sindiga Obuya, James Morara Obuya, Joel Onsare Obuya and Joel Onderi Obuya.

2. Priscah petitioned the court for grant of letters of administration on 8<sup>th</sup> April 2011. She named herself and her children as the only survivors of the deceased. The only property available for distribution was MANGA SETTLEMENT SCHEME/768 (sub-division of Plot 202). In due course a grant was issued to Priscah on 11<sup>th</sup> November 2015.

3. Priscah moved the court on 6<sup>th</sup> April 2017 by a Notice of Motion dated 5<sup>th</sup> April 2017 for orders, inter alia, that

*That this court be pleased to issue an order cancelling title numbers Manga Settlement Scheme/768 and 769 which were fraudulently obtained and restore the deceased’s original title number Manga/Settlement Scheme/202 and Land parcel Bassi/Bondonya/1634 be also cancelled and the fresh succession be done.*

4. In her deposition in support of the summons, Priscah deponed that the deceased had several pieces of land which he had indicated during his lifetime should be divided between the two houses so that her children are not rendered landless. She accused Daniel of fraudulently transferring land to himself to the disadvantage of his brothers. She also claimed that there was property in Transmara which Daniel had appropriated for himself and which ought to be part of the estate.

5. In his Replying Affidavit sworn on 27<sup>th</sup> September 2017, Daniel deponed that of his knowledge the deceased had several properties. He explained that during his lifetime, the deceased had divided BASSI/BONDONYA/24 into two portions and allocated to each wife. He stated that following a dispute between his mother Briskira and the deceased, she was awarded Plot 769 which was part of Plot 202 following a court decree in *Nyamira SRM Misc. App No. 38 of 2004 (Priscilla Mogoi Obuya v. Obuya Araka)*. He also told the court that he purchased the Transmara property on his own while BASSI/BONDONYA/1634 was always in the name of his mother. He also told the court that he was not interested in the properties which were now part of the deceased’s estate.

6. The issue in dispute is whether some of the properties named belong to the deceased’s estate. I have reviewed the evidence and my findings are as follows.

7. As regards MANGA SETTLEMENT SCHEME/202, there is clear evidence that it had been subdivided by the time the deceased died. When the petitioner applied for grant of letters of administration, she was aware that it had been subdivided hence she referred to Plot 768 as part of the division of Plot 202 as the only property of the deceased. In any event, the other part had already been given to Priscilla by a decree of the Court during the deceased’s lifetime. I therefore find and hold that Plot 769 registered in the name of Priscilla Mogoi Obuya is not part of the estate.

8. I am also satisfied that BASSI/BONDONYA/1634 was registered in the name of Briskira w/o Obuya in 1971 as the first registered owner hence the property does not belong to the deceased's estate.

9. The property in Transmara is known as TRANSMARA/MOYOI/143. It is registered in the name of Daniel Obuya Araka and he was registered as owner on 2<sup>nd</sup> March 2001. This was before the deceased passed away. It therefore does not form part of the estate.

10. The only properties therefore that form part of the deceased's estate are MANGA SETTLEMENT SCHEME/768 and BASSI/BONDONYA/24.

11. As Daniel has renounced any claim on these properties as a son of the deceased, the petitioner shall now apply for confirmation of grant within 30 days. There shall be no order as to costs.

**Dated and delivered at Kisii this 28<sup>th</sup> June 2018.**

**D.S Majanja**

**Judge**

Mr. Sagwe instructed by S.M Sagwe & Company Advocates for the applicant.

Respondent in person.