



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 75 OF 2015

IN THE MATTER OF THE ESTATE OF OINGA OKETCH & OMOLLO OKETCH (DECEASED)

-between-

BINYA OKETCH *aka* OBINYA OKETCH..... OBJECTOR/PLAINTIFF

-and-

1. MIGUNDE OKETCH OINGA

2. CLEMENTINA OLANG'O OMOLLO.....PETITIONERS/DEFENDANTS

JUDGMENT

1. This judgment relates to estates of two deceased persons. They are the **Estate of the Late Oketch Oinga** and the **Estate of the Late Omollo Oketch**. Omollo Oketch was the son of Oketch Oinga. The two deceased persons were registered in equal shares on the parcel of land known as **Kamagambo/Kanyamamba/217** (hereinafter referred to as '**the land**').

2. The grant of representation in respect of the twin estates herein were jointly granted to **Migunde Oketch Oinga** and **Clementina Olang'o Omollo** on 13/11/2015. The Administrators then filed the Notice of Motion dated 08/08/2016 on 11/08/2016 seeking to confirm the grant and to distribute the estates' sole property, the land. The Administrators proposed that the land devolves as follows: -

- (i) Migunde Oketch Oinga - 0.8 Ha.
- (ii) Emily Atieno Onyango, Victor
Otieno Onyango, Fredrick Ochieng
Onyango and Oginga Onyango - 0.8Ha.
- (iii) Binya Oketch *aka* Obinya Oketch - 0.8Ha.
- (iv) Awino Oketch - 0.8Ha.
- (v) Clementina Olang'o Omollo and
Lewnida Auma Omollo - 0.4Ha.

3. The Objector opposed the foregone proposed distribution and instead made the following counter-proposal: -

- (i) Awino Oketch - 0.95Ha.
- (ii) Clementina Olang'o Omollo and
Lewnida Auma Omollo - 0.4Ha.
- (iii) Binya Oketch *aka* Obinya Oketch - 0.95Ha.

(iv) Migunde Oketch Oinga - 0.95Ha.

(v) Emily Atieno Onyango - 0.95Ha.

4. The Objector was categoric that the married daughters should not get any share of the land in accordance with the Luo customs. He opposed the proposal by the Administrators claiming that the same will give unfair advantage to the house with many children; that is the house of Omollo Oketch. Upon testifying on the foregone, the Objector did not call any witness.

5. Migunde Oketch Oinga testified and his evidence was adopted by Clementina Olang'o Omollo. He fronted his proposal arguing that the land was distinctly and separately held by the two deceased persons and that only those in the respective houses should benefit from the portions held by each of the deceased persons. He called two witnesses who were his sons.

6. **DW1** was **Peter Odhiambo Migunde**. He stated that the persons entitled to inherit from the respective deceased persons had long settled on their respective portions and established their homes. To him, the Court should only give the beneficiaries in accordance with the portions they occupy.

7. **DW2** was **Elias Otieno Oketch**. He emphasized that the Administrators' proposal remains the best in the circumstances of this matter.

8. After hearing the witnesses this Court visited the *locus quo*. The Area Chief also attended the visit and informed the Court that he had tried to mediate between the parties in vain. The Court noted that the beneficiaries, as proposed to inherit land by the Administrators, occupied distinct portions of the land with clear demarcations. They also build their homesteads on their portions.

9. The ownership of the land was confirmed by a Certificate of Official Search dated 03/12/2014. The Certificate confirms that the land was registered in the names of Oketch Oinga and Omollo Oinga in equal shares on 28/05/1974. The land is 4.2 Ha in size. There was no evidence that the ownership was challenged since registration. It therefore means that each of the registered owners owned 2.1 Ha. That being so, I find that the Administrators were right in coming up with the respective beneficiaries for each of the deceased proprietors.

10. However, I must break ranks with the Administrators in their proposed mode of distribution. The reason being that the proposed mode of distribution on the children of Oketch Oinga exceeds the 2.1 Ha. Be that as it may, before I deal with the issue of distribution of the land, I must address the concerns raised by the Objector.

11. The Objector contended that none of the daughters of the deceased persons ought to inherit the land in accordance with the Luo customs. I dealt with the issue of whether married daughters ought to inherit from their father's estate in **Migori High Court Succession Cause No. 451 of 2014 In the Matter of the Estate of Nyacho Ojwando (Deceased) (2016) eKLR**. In that matter I found that all daughters of a deceased person whether married or not were entitled to inherit from the estate of their fathers in equal shares as the sons. The only exception would be in instances where the daughters renounce their such rights. Since I have not changed my position on the matter, I reiterate the said position herein and reject the argument by the Objector.

12. The other objection was that if the land is devolved in terms of the respective ownership of the deceased persons then the children of Omollo Oketch would get larger shares than the others. That argument is not based on any law or at all. The argument could only hold had the Objector obtained the necessary decree that Omollo Oketch held his portion on behalf and in trust of his father Oketch Oinga. As that is not the case, the argument is for rejection.

13. I will now turn to how the land ought to devolve. On the part of the Late Oketch Oinga, the evidence reveals that there are four brothers as all their parents passed on. According to **Sections 38** of the **Law of Succession Act**, Cap. 160 of the Laws of Kenya (hereinafter referred to as '**the Act**') the portion of 2.1 Ha. shall equally devolve to the four brothers. Each of them will therefore be entitled to 0.525 Ha.

14. On the part of Omollo Oketch, the two widows agreed to have a portion of 0.4 Ha. jointly registered in their names. That leaves the rest to be equally shared by the two children who each will be entitled to 0.85 Ha.

15. There was also an allegation that a portion of the land was sold by one of the beneficiaries to a third party. Since the sale was done after the death of the deceased persons and therefore not by any of them, then the alleged sale cannot be taken to be a liability on any of the estates. Whoever purchased the alleged portion from a beneficiary shall be at liberty to pursue his/her entitlement, if any, from that particular beneficiary(ies) as the case may be.

16. Having dealt with all the matters in controversy I hereby issue the following final orders: -

(a) **The Grant jointly issued to Migunde Oketch Oinga and Clementina Olang'o Omollo be and is hereby confirmed.**

(b) **The parcel of land known as Kamagambo/Kanyamamba/217 shall devolve as follows:-**

(i) **2.1 Ha. owned by Oketch Oinga (Deceased):**

· Migunde Oketch Oinga - 0.525 Ha.

· Awino Oketch - 0.525 Ha.

· Obinya Oketch - 0.525 Ha.

· Emily Atieno Onyango, Victor

Otieno Onyango, Fredrick Ochieng

Onyango and Oginga Onyango

in place of Denis Onyango Oketch

(also deceased) - 0.525 Ha.

(ii) 2.1 Ha. owned by Omollo Oketch (Deceased):

· Clementina Olang'o Omollo and

Lewnida Auma Omollo jointly - 0.4 Ha.

· John Omondi Omollo - 0.85 Ha.

· Titus Atoto Omollo - 0.85 Ha.

(c) The Migori County Surveyor shall first sub-divide the parcel of land known as Kamagambo/Kanyamamba/217 into two equal portions. Thereafter the Surveyor shall further sub-divide the respective portions as in (b) above and in the process, due care and attention shall be taken to the boundaries and demarcations on the land as to avoid demolition of any homestead erected on the land. Thereafter the Migori County Land Registrar shall issue respective Title Deeds.

(d) Each party shall bear its own costs of this cause as well as the costs of the survey exercise up to the issuance of the respective Title Deeds.

(e) This matter shall be fixed for a Mention on 6/03/2019 to confirm the status on the distribution and with a view of marking the file as closed.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of November, 2018.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Migunde Oketch Oinga and Clementina Olang'o Omollo, the Petitioners.

Obinya Oketch, the Objector.

Evelyne Nyauke - Court Assistant.