



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISCELLANEOUS CIVIL CASE NO. 6 OF 2016

CHARLES ODHIAMBO OKELLO.....APPLICANT

VERSUS

PERES ONYANGO ONYISO.....1ST RESPONDENT

BOAZ ODUOR2nd RESPONDENT

JUDGMENT

1. This matter originated from Kisumu High Court vide **Kisumu High Succession cause No 784 of 2014** wherein Boaz Oduor and Wycliffe Daniel Omondi (Boaz) petitioned for grant of letters of Administration Intestate in respect of the estate of the deceased **Peres Onyango Onyiso** who died on 24.5.2014. Boaz in his Petition presented the said Petition in his capacity as **GRANDSON** (*see P & A 80 and P & A 12 dated 25th August 2014*).

2. In the said Petition, the said Boaz the Petitioner listed the following as surviving the deceased Peres Onyango: -

- (1) Awuor Onyiso - daughter – adult**
- (2) Joseph Aluoch - grandson – adult**
- (3) Charles Odhiambo - grandson – adult**
- (4) Andrew Opondo - grandson – adult**

3. The Assets for which the grant was being sought are: -

- a) Land Parcel No. Siaya/Kochieng 'B'/757**
- b) Land Parcel No. Siaya/Kochieng/ 117**
- c) Land Parcel No. Siaya/Kochieng/780**

and the total estimated value of the said assets was given as KShs 700,000/- with Nil liabilities.

1. In a further affidavit filed in support of the Petition dated 3.10.2014 sworn by Boaz, he claimed that Awuor Onyiso had refused to sign consent and that the other three he had a case with so they declined to sign Probate and Administration Form No. 38.

2. The Death Certificate in respect of the Deceased is No. 0431403870 and is for Peres (female) Onyiso who died aged 92 years on 24.5.2014 domiciled at Kochieng 'B' and which death was registered on 29.8.2014 and issued to a relative by the Siaya Registrar of Births and Deaths.

3. The Petition was gazetted on 19.12.2014 vide Legal Notice No. 1724.

4. On 26.1.2015 a grant of Letters of Administration Intestate (P & A 41) was issued to the Petitioner (Boaz).a

5. The above Succession Cause was transferred to Siaya High Court on 1.9.2016 and received on 5.9.2016. The same was assigned Siaya High Court in this Misc. Application No. 6 of 2016 subject of this judgment.

6. On 22.3.2018, one of the Objectors herein Andrew Opondo filed summons for revocation of grant issued to Boaz. The Summons were brought under Sections 45, 47, 51 and 76 of the Law of Succession Act and Rule 40 (1) of the Probate and Administration Rules seeking that the grant of Letters of Administration Intestate of the Estate of the Deceased Peres Onyango Onyiso issued to the Petitioner Boaz Oduor Wycliffe Daniel Omondi on 26.1.2015 be annulled/revoked.

7. The grounds upon which the summons is predicated are that: -

a. **The Petition for Letters of Administration Intestate and grant was issued to the Petitioner without consent of the family members.**

b. That the deceased left Dependants surviving him namely:

Awuor Onyiso – daughter – Adult

c. That the Petitioner concealed very important information to the Court that he is from Nyawasembo Sub-Clan and does not feature anywhere in the family tree yet they are from Uradi Clan of Uwiny Sub-Tribe.

d. That the Petitioner Boaz falsely obtained the power of Attorney when he was Councillor in 2008 and cunningly went ahead to assist Peres Onyango Onyiso who is illiterate to succeed all the parcels which were registered in Okello Onyiso's name without a grant;

e. That the Petitioner without the consent of family Members irregularly transferred two parcels of land – Siaya/Kochieng 'B'/162 and Siaya/Kochieng 'B'/762 to his names from Peres Onyango Onyiso;

f. That the assets of the said estate are: -

(1) Siaya/Kochieng 'B'/762

(2) Siaya/Kochieng 'B'/673

(3) Siaya/Kochieng 'B'/117

(4) Siaya/Kochieng 'B'/757

(5) Siaya/Kochieng 'B'/780

g. That the identification and shares of all persons entitled to the share in the estate of the deceased were not ascertained and consented to as maliciously alleged by the Petitioner.

8. The Supporting Affidavit sworn by Andrew Opondo on 20.3.2018 reiterate the grounds set out on the face of the summons for revocation of the grant, adding that the Petitioner had applied for Confirmation of the Grant hence the Grant should be nullified and issued to the rightful beneficiaries since the Petitioner intended to dispose of the properties after obtaining a confirmed grant and that they stood to suffer irreparably unless the Orders sought were granted.

9. The Petitioner filed a Preliminary Objection to the Summons for revocation of grant but the same was dismissed by Hon. J. A. Makau – J. on 10th April, 2018.

10. In a detailed Replying Affidavit filed on 29.5.2018 sworn by the Petitioner Boaz, he opposes the summons for revocation of grant issued to him and annexes several documents to this affidavit sworn on 29.5.2018 before Oduor Henry John, Commissioner of Oaths.

11. In the said affidavit the Petitioner contends that the issues raised could have been raised by way of Objection to making of grant as the said issues were overtaken by events.

12. That the Applicant and his cohorts were duly notified and were fully aware that the Petitioner was filing the Succession proceedings herein.

13. That the Applicant had colluded with the Area Chief on numerous occasions to forcefully force the participation of the Objectors as Beneficiaries.

14. That the deceased Peres Onyango Onyiso was married to the Deceased Onyiso Owinya with whom they were blessed with 3 children namely:

a) Aluoch Onyiso;

b) Mary Awuor and

c) Margaret Adongo

15. But that Aluoch Onyiso died while still a Minor and Mary Awuor was now married and blessed with 3 children.
16. That Margaret Adongo died and left behind 6 children.
17. That Mary Awuor was at all times staying at her matrimonial home.
18. That the Applicant and his family i.e. Mother Maria Akumu Owinya and brother Joseph Aluoch Owinya had forcefully encroached and occupied the parcels of land forming the subject matter of the estate herein of which the deceased Peres filed Court proceedings to evict them from the suit estate.
19. That the reason why the objectors forced themselves into the land parcels was because they claimed that Peres had no male child yet the land had been transmitted to her from her late step son Okello Onyiso.
20. That as the deceased was of advanced age, she gave the Petitioner Powers of Attorney to prosecute the suit against the Objector's family on her behalf and that her suit was successful leading to eviction orders being issued against them as shown by annexed proceedings hence the Objectors intend to claim her land through these Objection proceedings.
21. That during the lifetime of Peres the Petitioner was her guardian, caregiver, caretaker, errand child, power of attorney and a dependent and or beneficiary of her estate by virtue of her word.
22. That only Mary Awuor ranked in priority to the Petitioner but that on being approached to Petition, she refused stating that she did not want to be involved in clan issues and that she even swore an affidavit recanting her rights to petition.
23. That Charles Odhiambo was a biological son to Ochieng Ademba and Beatrice Nekesa and not the Biological son of Okello Onyiso.
24. That Charles Odhiambo's mother was only inherited by Okello Onyiso as a wife prior to his demise but she left him and she was again inherited by Onyango Nyanjwayi.
25. That the Objector should have filed an affidavit of protest to confirmation of grant instead of summons for revocation of grant.
26. That in any event the only property now forming part of the Deceased's estate is Land Parcel No. Siaya/Kochieng 'B'/757, 117 and 780 respectively because during her lifetime, Peres sold parcel 757 and 117 to Vitalis Otieno Sewe and that the Petitioner acted as Attorney for Peres but she died before the transfer were concluded which land parcel 757 was later gifted to the County Government of Siaya who have built a Health Center thereon.
27. That Peres instructed that parcel No. 780 be transferred to her daughter Mary Awuor hence Vitalis Otieno Sewe is a liability to the estate by virtue of having purchased parcel Nos.757 and 117 hence only parcel No. 780 is free to be transferred to Mary Awuor.
28. The Objector/Applicant filed a 'replying affidavit' on 8.8.2018 in response to the Petitioner's replying affidavit asserting that his application was competent and that is the reason Hon. Makau – J. allowed it to proceed to hearing on merit and dismissed the Preliminary Objection.
29. That he was not a party to the succession case filed hence he could not have been notified. He denied ever having a case prior to the demise of Peres.
30. That Peres had close family members who assisted her not the Petitioner.
31. That Mary Awuor never declined to Petition and that her alleged affidavit was not annexed to the Petitioner's Replying Affidavit.
32. The Petitioner filed a further affidavit on 11.6.2018 adding that Mary Awuor was included in the Petition as one of the daughters of Peres and that Peres had been chased from the land because she had no sons and the Petitioner protected her and he had several cases with Okello Onyiso, her step son, that the petitioners did his part to protect Peres and that despite an appeal, Okello Onyiso lost the case and the Petitioner built a house on Parcel No. 673 for Peres.
33. That Charles Odhiambo Okello is a son to Beatrice Nekesa the wife to Ochieng Kossan Makademba, the father to Charles Odhiambo since Okello Onyiso never married at all.
34. That the petitioner jointly with Peres sued the clan to wrestle from them the land. He denied taking advantage of Peres' illiteracy maintaining that he acted with Power of Attorney.
35. That Mary Awuor refused to get involved in clan land disputes and that is when Peres authorized him to sell 2 parcels Nos117 and 757 and part of the money was paid to her family upon her death as funeral expense of KShs.25,000/= being part of the purchase price and that the Chief was aware of the transactions.

36. That his obtaining of the grant was to transfer land to Mary Awuor and to the Purchaser as per Peres's directions.
37. The summons were canvassed by way of the affidavit on record as reproduced hereinabove and viva voce evidence. In his evidence in chief given on oath on 9.5.2018 the Objector testified that the deceased Peres Onyango Onyiso was his Mother. That her husband and his father were brothers. He denied being related to the Petitioner. He claimed that parcel Nos 673, and 762 did not belong to Boaz but to Onyiso's family comprising the Objector and his brothers and Mary Awuor, Joseph Aluoch and Charles Odhiambo.
38. On being cross-examined by Mr. Ooro Counsel for the Petitioner, the objector stated that his biological Mother was Mama Akumu Owinya and his brothers were Joseph Aluoch Owinya.
39. That his father Augustino Owinya had died and that the husband of Perez was Onyiso Owinya. He denied that Perez's husband was the biological brother to his father. He stated that his father had his own land while Onyiso had his own.
40. That the disputed parcels were registered in the names of Okello the stepson of Peres. He did not know that Peres did succession and succeeded land from Okello. He denied that there were any Court eviction orders initiated by Perez against his Mother Maria and Joseph Aluoch. He stated that he wanted a portion of the disputed land.
41. PW2 Joseph Aluoch Owinya testified that Peres was a wife to the elder brother of his father, that PW1 the objector was his younger brother. That Okello Onyiso owned that disputed parcels Nos 762 and 673 and when he died, PW2 were living on the same but later Boaz told them to vacate the land hence Boaz's name should be removed from the land. He stated that Mary Awuor is not entitled to any land but that the family would sit to decide. Further that Charles Odhiambo had not been assigned any portion of land.
42. On being cross-examined by Mr. Ooro PW2 stated that he did not know the Petitioner and that he never knew him even when Perez was alive. He denied that they chased Peres away as she lived in Onyiso's house. He denied being aware of previous Court proceedings between himself, his mother, Boaz and Peres over the subject parcels.
43. PW3 Charles Odhiambo testified that he was the son to Okello Onyiso who died when he PW3 was young and that Peres Onyango was his paternal grandmother. That after her death, PW3 discovered that his father's land had been succeeded by Peres and later by Boaz. That before he died, his father wrote a letter (will) in Dholuo which was later translated in English and produced in evidence as an exhibit.
44. On being cross-examined by Mr. Ooro Advocate, PW3 stated that when his father died, he was a very young boy and that his mother was Beatrice Nekesa.
45. PW4 Mary Awuor Onyiso Owinya testified that Peres Onyango Onyiso was her mother. She denied knowing Boaz Oduor and stated that she just saw him in Court. She called on Boaz to stop disturbing them over land that belonged to her father.
46. On being cross-examined by Mr. Ooro, she stated that Andrew Opondo her brother is the one who challenged Boaz. That she only saw Boaz in her Mother's funeral. That Okello Onyiso was her step brother who was married to Nekesa. That Okello had 4 children. She denied knowing who Ochieng Ademba was. She stated that she could not tell if Charles Odhiambo was a son to Ochieng Ademba. She stated that Charles was a son to her brother.
47. That she was married and lives in her matrimonial home where she has grown up children. She denied knowing if Boaz cared for her mother while she was away.
48. DW1 Boaz Oduor Omondi the petitioner testified that he knew Perez Onyango Onyiso the deceased who was a Sister to his mother but a grandmother to him. He denied disinheriting the Objectors. That he knew Perez had a daughter so he included her as a beneficiary. He denied that Andrew Opondo was Peres's Son and neither was Joseph Aluoch.
49. That he filed succession because he used to take care of Peres when the mother of Odhiambo and of Aluoch chased her from her land and she went to live with his Mother DW1's mother and that Peres was only restored on the land after he filed Court proceedings using her Power of Attorney in C.C. 28/2012 against Maria Akumu Owinya and Joseph Aluoch Owinya, Mother and Son.
50. He denied knowing Charles Odhiambo but stated that he knew his Mother. That Charles Odhiambo was a son to Ochieng Ademba and lived in his Father's home not Okello's home. He stated that he was not opposed to Mary Awuor getting a share of her Mother's estate and that Peres told him to assist Mary.
51. That Joseph and Andrew were not entitled to inherit Peres's land because they were evicted from the land by a Court Order issued to Peres. He referred to photographs annexed to his affidavit showing a house he allegedly built for Peres.
52. On being cross-examined by Andrew Opondo the Objector he stated that he was present when Peres died and that he constructed for her a house and gave KShs.50,000/= for her funeral. He stated that he sold part of the land for Peres to raise her funeral expenses.
53. Parties never submitted. They left the matter to Court for determination.

DETERMINATION

54. Having heard the Objector's case as against the Petitioner, in my view, the main issue for determination is:

(1) Whether the Petitioner was justified in Petitioning for Letters of Administration Intestate?

55. What is not in dispute is that the deceased Okello Onyiso was the Administrator of the estate of his late Father Onyiso Owinyo. The said Okello Onyiso was not survived by any widow albeit what emerges from the evidence on record is an allegation that he sired Charles Odhiambo with Beatrice Nekesa whom he had inherited.
56. It is also not in dispute that Peres Onyiso became the administrator of the estate of the late Okello Onyiso.
57. In addition, it is not in dispute that Peres was not survived by any male child but had daughters only and as at the time of her demise, only Mary Awuor survived her.
58. Section 38 of the Law of Succession Act Cap 160 Laws of Kenya provides that where an intestate has left a surviving child or children but no spouse, the net Intestate estate shall, subject to the provision of Sections 41 and 42 devolve upon the surviving child, if there be only one or shall be equally divided among the surviving Children.
59. In the instant case, the Petitioner Boaz in his affidavit in support of the Petition for grant declared that he was a grandson to the late Perez Onyiso.
60. However, in his oral evidence in chief he was unable to vividly explain his relationship with the deceased Perez. He stated that Peres was his mother's sister and at the same time his grandmother. In addition, he did not controvert the contention by the Objector that he came from a totally different clain and sub-clan from that of the family of the late Onyiso, the husband of the late Perez and the Father of Okello Onyiso, her step son and whose estate she was the Administratrix thereof.
61. It then apparently becomes clear that Perez Onyiso was an Administrator of the estate of Okello Onyiso and therefore not only was she a direct beneficiary of the said estate since Okello Onyiso was the Administrator of her deceased's husband's estate and therefore he held the estate in trust for himself and Peres Onyiso.
62. She was therefore expected to administer the estate as a beneficiary and for the benefit of any other person who was beneficially entitled to benefit from the said estate of Okello Onyiso. There is no evidence on record from either side that there was any challenge to the fact of Peres being the Administratrix of the estate of Okello Onyiso save that there is evidence of the Court proceedings commenced before the Tribunal by Peres to evict the relatives of her late husband including Joseph Aluoch Owinya and his Mother Maria Akumu Owinya from Land Parcel No. Siaya/Kochieng 'B' 762.
63. This was vide Siaya SRM Misc. Application No. 28 of 2002 and by an Order issued on 4.4.2014 dated 17.3.2014 enforcing an eviction Order dated 30th October 2013.
64. In the said proceedings before the Tribunal, it was found that the land in dispute was family land belonging to Okello Onyiso who was the step son to the Respondent Perez Onyango Onyiso, that Okello never married thus he had no offsprings, that Okello gave the said land to his stepmother Peres who later processed succession Letters over parcel No.762 and was given official grants to have the estate of Okello as the Administrator them.
65. The above proceedings which culminated in the eviction of Joseph Aluoch and his mother Maria Akumu Owinya were never challenged. Therefore, the Orders of eviction still stand valid.
66. However, Joseph Aluoch and Andrew Opondo who are brothers waited until Peres had died is when they sought to challenge whoever succeeded the deceased Peres. In my view, that is an abuse of Court process by seeking to have a second bite at the Cherry.
67. This is because vide Succession Cause No. 38 of 1998 Peres Onyango Onyiso was issued with grant of letters of Administration intestate to the estate of the deceased Okello Onyiso and the said grant was confirmed on 2.9.1999 without any protest or Objection being levelled against her Administration of the estate comprising parcel Nos Siaya/Kochieng 'B' 673, 780, 762, 757 and 117.
68. Surprisingly, after the demise of Perez, the people who wanted to succeed her vast estate were many as shown by the Assistant-Chief's letter dated 14.8.2014 that Awuor Onyiso, Joseph Aluoch, Charles Odhiambo and Andrew Opondo, who are the Objectors to these proceedings were her legal beneficiaries (next of kin).
69. What the Assistant-Chief was doing in my humble view, was circumventing the Law and the Law includes Case Law.
70. I say Case Law because the Tribunal decision that led to the eviction of Joseph Aluoch and his Mother Maria Akumu from parcel No. 762 has never been overturned or challenged by way of an appeal. The decision therefore stands.
71. This is not to say that any other Tom, Dick and Harry could emerge and become the Administrator of the estate of Peres Onyango Onyiso.
72. Peres was survived by her daughter Mary Awuor Onyiso and therefore this is the person who was legally entitled to Petition for grant of letters of Administration Intestate of the estate of Peres Onyango. Any other person laying claim to the estate of the late Peres could only lay such claim through Mary Awuor Onyiso and such claim could be lodged through a citation to compel Mary Awuor Onyiso to take out Letters of Administration for the estate of Peres or wait until Mary Awour has obtained grant and sue her for recovery of their entitlement; or object to her obtaining a grant or file a protest to the confirmation of grant issued in her favour.

73. Instead, what the Court observes from the documentary and oral evidence adduced on record is that Boaz Oduor and Wycliffe Omondi filed for succession to administer the estate of the deceased Peres and even purported to file an affidavit claiming that Peres' beneficiaries who were entitled to consent to his petition had refused.
74. Albeit the Petitioner herein had powers of Attorney dated 14.8.2003 enabling him to deal with the named parcels of land, that Power of Attorney lapsed or was revoked by effluxion of time upon the demise of Peres Onyiso.
75. Furthermore, the Petition and Supporting Affidavit filed by Boaz gave false information to the effect that Peres was survived by among others Andrew Opondo as grandson and Joseph Aluoch as grandson yet at the hearing of these proceedings, Boaz disowned the two and went further to disown Charles Odhiambo whom he had named as grandson to Peres. He now claims that Charles is a son to Beatrice Nekesa and his father is Ademba.
76. The same mistake was reiterated by Andrew Opondo in his supporting affidavit, supporting his summons for revocation of grant in favour of the Petitioner. He claimed on Oath that him and Joseph are sons to Peres and that Charles Odhiambo was Peres's grandson.
77. Accordingly, I find and hold that both Boaz and Joseph Aluoch have not been acting in good faith. They have all tended to overshadow the first line beneficiary Mary Awuor and from the oral testimony of Joseph Aluoch, he does not believe that Mary Awuor is entitled to the share of the estate of Peres. Joseph Aluoch did not impress the Court as an honest witness. his interests are selfish and his involvement in this matter is to amass the whole estate of Peres since he failed to get it through tribunal proceedings wherein him and his mother Maria Akumu were evicted in 2014.
78. On the part of Boaz, whereas he may have endeared himself to Peres as his errand child and caregiver and protector and that he built for her a house, the view of this Court is that he took advantage of the illiteracy and old age of Peres to carry out certain transactions during peres' lifetime and upon her demise which would otherwise amount to fraud for example, his own exhibit an Agreement for Sale of Siaya, Kochieng 'B'/117 to Vitalis Otieno Asewe is not dated and he was claiming that it is Peres Onyiso who sold it to Vitalis Otieno. However, the purported agreement shows that it was him selling the land to Vitalis Asewe. In addition, that 'agreement' is not signed by either Peres or Vitalis Otieno Asewe.
79. Further, in the purported agreement it is claimed that Boaz was to get Sh.55,000/= Peres KShs.58,000/= and the balance was to be given to the family members through Area Assistant Chief. The family Members are not named and the purported expenses incurred by Boaz in a purported sale of land are not disclosed.
80. In his further evidence Boaz also claimed that he sold part of the land and gave to Peres' family Members money or proceeds of the said sale for funeral expenses but he never disclosed which family Member or members were given the proceeds of sale of the land and how much money was given out. The so called 'house' that Boaz purportedly constructed for Peres and the photographs he produced in evidence only display a sorrowful miserable state of affairs and lifestyle that Peres lived before her demise at a grand old age.
81. Further fraud on the part of Boaz is evidenced in the letter of consent dated 1.4.2014. Thus whereas Boaz claimed in his evidence on oath that Vitalis Asewe sold the land to the County Government of Siaya namely parcel No. 757, the consent clearly indicate that it was Boaz who had transferred the said land to the County Government of Siaya.
82. The letter of 18.3.2014 by George Ayoga Assistant Chief Kochieng 'B' Sub-Location claims that Peres was incapacitated, lame, paralyzed on the left side of her body and that Boaz was her Legal Administrator and that her state of health was evidenced by the photograph taken in his presence. **[which shows a frail old woman seated outside a grass thatched house that was wearing out].**
83. The Court observes that the said old lady in one of the photographs which betrays Boaz's Angelic face is shown being made to thump-print documents and therefore the question is whether that paralyzed old lady had the mental and physical capacity to sign off anything /property for anybody.
84. That is the same lady who died on 24.5.2014 and there is no evidence adduced to show that her caregiver who was involved in the Management of her property as her 'Legal Administrator' ever took her to any hospital for medical attention. And by August the same year, the same caregiver was already in Court, instead, immediately upon her demise, petitioning to administer her estate.
85. With respect to Land Parcel No. 673, the record shows that on 13.10.2018 Boaz Oduor became the registered owner thereof. This was before the demise of Peres Onyiso. It is not stated in what capacity he acquired that title as there is no evidence that he bought it from Peres or that she gifted it to him.
87. To crown it all, the Petitioner never obtained consent of Mary Awuor or the other named alleged beneficiaries that he named in the petition before Petitioning for grant
88. Albeit he claimed that they refused to sign Probate and Administration Form 38, there is absolutely no justification for his filing for grant. He has not claimed that Peres owed him any debt in which case he could have cited Mary Awuor or any of the purported beneficiaries and not to assume the role of the persons(s) who would be legally entitled to Petition for grant of Letters of Administration Intestate on priority basis.
89. As at 31.3.2014 when Boaz was busy transferring property No. 757 to Siaya County Government as owner thereof ostensibly under power of Attorney, the owner of the said parcel Peres was very ill and she died barely two months later, going by the annexed photographs.
90. The transfer of land forms annexed are not signed by the person certifying and neither is his/her designation given.

100. There is then the lingering question of whether Charles Odhiambo is a bonafide beneficiary of the estate of Peres Onyiso. Whereas Boaz and the Objectors in their respective initial documents claimed that Charles was a son to Okello Onyiso the Step son of Peres, the Letter of 14.9.1997 written by Assistant Chief Francis Okoth claims that Okello Onyiso died in 1994 without any wife or child hence the responsible people for parcel No.673 were Peres and Boaz her guardian, a grandson of the clan.

101. And when Boaz applied for confirmation of grant issued to him and even sought for waiver of six months waiting period, he never filed a schedule of distribution of the estate of Peres to show the respective shares of each beneficiary. He assigned to himself 100% shares of each parcel of land named therein.

102. On the basis of the above exposition, this Court is unable to believe that Boaz was acting in good faith when he got involved in the matters land and estate of the late Peres. On the Other hand, it is clear that there is scramble by Andrew Opondo and Joseph Aluoch for the land left behind by Peres to the exclusion of Mary Awuor due to the Latter's naivety, as shown by the letter of 14.9.2013 by Assistant Chief George Ayoga.

103. The letter by Nyanga Advocate dated 28.1.2015 does not cure the defect in the undated document alleging sale of land belonging to Peres to one Vitalis Otieno Asewe which document is not even signed by the purported Vendors and Vendees.

104. On the whole, therefore, it is clear that Boaz the petitioner herein was involved in the meddling into the estate of Peres Onyiso.

105. In view of the above prevailing circumstances the Order that commands itself to issue by this Court is to revoke the grant issued to Boaz on 25.1.2015 and direct that the fresh Petition of Letters of Administration Intestate in respect of the estate of Peres be lodged by Mary Awuor or by any other appointed person with the consent and full participation of Mary Awuor Onyiso the sole surviving daughter and child of Peres Onyiso.

106. Each party shall bear their own costs of these proceedings.

Dated signed and Delivered in open at Siaya this 19th day of December 2018.

R. E. ABURILI

JUDGE

In the presence of:

All Objectors

The petitioner and his advocate Mr Ooro

CA: Brenda and Modestar