



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**SUCCESSION CAUSE NO: 335 OF 2015**

**IN THE MATTER OF THE ESTATE OF:**

**DICKSON MARTIN JAOKO &**

**SULEIMAN JAOKO AJUOL .....DECEASED**

**BETWEEN**

**FREDRICK MBOYA JAOKO &**

**ERICK OCHIENG SOLOMON JAOKO..... APPLICANTS**

**AND**

**JANE AUMA OMORO.....PETITIONER/RESPONDENT**

**JUDGMENT**

1. Dickson Martin Jaoko the (deceased) died on 28<sup>th</sup> September 2005 and was survived by his 2<sup>nd</sup> wife **JANE AUMA OMORO** and **CEASAR JAOKO** and **PHOEBE ANYANGO**.

Jane then filed a succession cause alongside her brother **JOSEPH OMORO** and obtained grant of letters of administration in respect of the estate of **DICKSON MARTIN JAOKO**. She listed parcel No. **KANYAMWA/ KABONYUO/KWANDIKU/1603** as one of the assets and upon the grant being confirmed, she transferred the parcel to her name.

2. When **FREDRICK MBOYA JAOKO** and **ERICK OCHIENG SOLOMON JAOKO** brother (of the deceased) learnt about this, they applied for revocation of the grant saying **JANE** had fraudulently concealed and misrepresented material facts as follows:-

a) She enjoined her brother **JOSEPH OMORO** as a co-administrator, yet he had no interest whatsoever in the asset aforementioned.

b) She fraudulently concealed from the court the fact that the property now registered in her name actually belonged to her father –in –law **SULEIMAN JAOKO AJUOL** who died on 7<sup>th</sup> March 1993, and the land had been fraudulently transferred to the name of the late **DICKSON MARTIN JAOKO** without consent of the family.

c) **JANE** failed to disclose to the court that Dickson had two wives, namely **BENTER ANYANGO JAOKO** and herself, and that Benter had two surviving children.

d) She also failed to disclose to the court that the land parcel **No. KANYAMWA/KABONYO/KWANDIKU/1603** was sold by the larger **JAOKO** family to **PETER OTIENO MIDONDO** for value without notice.

3. They also pray that the transfer of the land into the name of **JANE AUMA OMORO** be cancelled and the same be transferred into the names of **FREDRICK MBOYA JAOKO** and **ERICK OCHIENG SOLOMON JAOKO**. Once this happens they request that the land be registered in the names of **PETER OTIENO MIDONDO** the purchaser.

4. In reply, **JANE** stated that her co-wife **BENTER ANYANGO** died and left the children under her care. She mentioned that the parcel in question belonged to the late husband. It is her contention that after the death of her husband, the applicants, with an intention to defraud and deprive her and her children of the estate, made an application for grant of letters to administer her late husband's estate. They forged her signature and placed their names as her names.

5. Thereafter the two applicants who are her brothers-in law) and **PETER OTIENO MIDONDO** (whom she had leased the said land to) colluded and presented the letters as a buyer through a forged sale of land agreement purporting that she had sold the land to him she only discovered that the applicants had filed an application for grant of letters of administration in the year 2014 when she was summoned to **NDHIWA** Law court and told to sign for the grant which had been issued stating that she had collected the same- she declined as she knew nothing about the application.

6. Later on the purported buyer **PETER OTIENO MIDONDO** filed a suit against her being **HOMA Bay CMCC No. 14 of 2004** praying for specific performance but he later withdrew the said suit.

7. At the hearing of the application. Mr. Mwamu appeared for the applicants (plaintiffs) while the defendant (respondent) appeared in person.

8. **FREDRICK MBOYA JAOKO** (PW1) told this court that upon the death of his elder brother **DICKSON**, the defendant applied for grant of letters of administration without consulting the other family members nor did she include them as beneficiaries. He explained that at the time of the deceased's death, he was taking care of the family land.

Jane eventually obtained the grant of letters of administration and transferred the land into her name, before selling it to **Bishop JAMES OTIENO MILAR** at Kshs. 300,000/= (as per sale agreement Ex 6) PW1 and his brother were witnesses to the sale agreement.

9. Although the plaintiff claimed that the land forming part of the late Dickson's estate belonged to their late father (**SULEIMAN JAOKO**) PW1 stated on cross examination that his late father and his two wives were buried on land No. 1793 belonging to their father's brother namely **CLEMENT OGUTU**. The witness referred to a copy of the green card showing that parcel **No. KANYAMWA/KABONYO/KWANDIKU/1603** was actually registered in the name of **SULEIMAN JAOKO AJUOL**. However the deceased moved to live on the land and PW1 did not know what arraignments their late father had with their late elder brother Dickson regarding the land in question.

10. **CEASAR JAOKO JUMA** (PW2) a son to Dickson confirmed that after the death of his father and mother he and his sister **PHOEBE** lived with the defendant (**JANE**) until the year 2009 when she chased them away, and he went to live with the 1<sup>st</sup> plaintiff.

He was not aware that the defendant had filed a succession cause as she did not inform him. He states that parcel No. 1603 belonged to his late father, yet he was not given any share of the asset upon confirmation of the grant.

11. 23 year old **ERICK OCHIENG SOLOMON JAOKO** (PW 3) told this court **THAT PARCEL No. 1603** measuring 10 acres was originally registered in the names of their late father **SULEIMAN JAOKO AJUOL**. He too says they never discussed with the defendant regarding who should take up grant of

letters of administration in respect of the late brother.

12. **PETER OTIENO MIDODO** (PW4) A Bishop with **PEFA** Church of Kenya and a senior pastor at **NDHIWA PEFA TOWN CHURCH** testified that he was introduced to the defendant by **ELIUD MUNGALA** (a land agent) she wanted to sell a parcel of land, which at the time was registered in the name of her late Husband **DICKSON MARTIN JAOKO** but that it was family land. She indicated that she had survived her husband along with two brothers in law i.e **FRERICK MBOYA** and **ERICK OTIENO** and two of her late co-wife's children. She consulted her brother-in-law because she said it was family land.

13. PW4 insisted that the assistant chief of Lower Kabonyo had to be present to witness the transaction – also present were the two plaintiffs and PW4's wife and the defendant. They drafted an agreement and went to Ndhiwa law court, but the magistrate was not present and they were advised to append their signatures to the agreement and that it would later be presented to the magistrate to endorse. The land was sold to him at Kshs. 300,000/= which sum he paid in various instalments on different dates leaving a balance of Kshs. 10,000/= which was to be paid in the presence of the land control Board officials after succession was done. Later on the defendant presented a signed copy of the agreement.

14. Thereafter the defendant handed over to him a copy of affidavit confirming that she was a wife to the late Dickson as well as a copy of the death certificate. The defendant told PW4 to start the process of succession, so he hired a surveyor to carry out a survey of the land. Since PW4 had never pursued a succession cause before, he relied on the surveyor to assist him file succession cause No. 3 of 2012 at Ndhiwa Law courts.

15. Once the grant was issued the surveyor advised him to request the defendant to attend court. However the Executive Officer at Ndhiwa court pointed out to them that there was an anomaly in the documents as her two brothers-in-law were described as sons. Eventually the magistrate at Ndhiwa Law Courts advised them to seek services of a lawyer before the grant could be confirmed.

16. Thereafter the defendant became evasive and eventually offered to return the money PW4 had paid her, saying she wanted her land back. The matter was reported to the area assistant chief who tried to arbitrate, but the defendant now changed her story to claims that she had only leased the land to PW4 and not sold it.

17. In the meantime PW4 had developed the land by planting sugarcane on it. Which activity he has carried out over the last 5 years.

The area assistant chief **MARGARET AWINO OKOTH** (PW5) confirmed that the defendant (who is one of her constituents) had gone to her office saying she wanted to sell her land to PW4 and infact the defendant wanted her to witness the same- which she did.

18. It was the evidence of PW5 that the defendant said she was going to get another piece of land using proceeds from the sale and this would take care of the interests of the minors and her two brothers-in-law because the land she was selling was family land.

19. PW5 confirmed that she wrote the letter dated 17/7/2012 at the defendant's request to enable her file a succession cause- the letter described the defendant as the sole beneficiary, although it also mentioned the existence of the minors (Ceasar) and the two plaintiffs. However PW5 had also earlier on written another letter in respect of the estate of Suleiman Jaoko Ajuol in which she had listed the defendant, her co-wife and the two plaintiffs as beneficiaries to the estate.

20. **VIOLET LAMU** (PW6) the Homa Bay Land Registrar confirmed that the register which was opened on 14/8/1998 showed that the proprietor of parcel No. **KANYAMWA/KABONYO/1603** was **SULEIMAN JAOKO AJUOL**.

21. However there was a transfer to Dickson Martin Jaoko on 10/10/1995 and a title deed was issued to

him. She explained that when one is deceased and there is need to transfer title, then the lands office requires that the transfer be by way of transmission after succession has been concluded. If that process is not followed then the transfer is improper. In this case the transfer to Dickson was not by transmission.

22. Thereafter the land was transferred into the name of **JANE AUMA OMORO** by way of transmission after filing and conclusion of succession cause No. 335 of 2015. This was so because there was a grant confirmed by Majanja-Judge on 11/11/2015 listing Jane Auma Omoro and Joseph Owuor to hold 3.0 Hectares in trust for Ceasor and Phoebe in equal share.

Jane got 1.0 Hectares absolutely. However what the Judge directed was not reflected in the register and Jane is registered as the absolute owner of the whole parcel.

23. In her evidence, Jane Auma Omoro (DW1) testified that all she ever did with the land was to lease it to PW4 at a fee of Ksh 300,000/= for a period of 5 years. She only learnt from PW4 that a grant had been issued in respect of her late husband's estate. When they went before the magistrate at Ndhiwa for confirmation of the grant, she realised there was a mis-description of the beneficiaries and she wrote a letter stopping the succession cause- she eventually filed a summons for revocation of the grant. She did file for grant of letters of administration and explained that since she had been rejected by her in-laws; she named her brother **JOSEPH OMORO** to hold in trust for the children the share due to them. She further explained that before confirmation she sent a letter to the plaintiffs requesting them to attend court but they failed to do so. She also maintained that she was to get 1.0 Ha. While the children were to get 3.0 Ha in equal shares.

24. On cross examination she showed a copy of the order issued by the court requiring the respondents to attend court and she even served the same through the area chief (it bears the chief's stamp)

25. She denied misleading the court or the land registrar. She also admitted on cross examination that actually the land belonged to her father in law **SULEIMAN JAOKO** who died in 1993 and it was transferred to her husband's name in 1995 although she was not aware whether a succession cause was prosecuted in respect to her father-in-laws estate. She confirmed on cross examination it was an ancestral land.

26. The defendant is opposed to the respondents getting a share of the land saying they have 2 others parcels of family land. She prays that even if the grant is nullified she should be given 1.0 Hectares of the available asset.

The issue here is very simple namely;-

*1) Did Jane Auma Omoro misrepresent material facts when she applied for and obtained confirmation of grant of letters of administration in respect of the estate of the late Dickson Martin Jaoko.*

*2) Did she leave out some beneficiaries?*

*3) Did she conceal from the court the true owner of the property which was offered for distribution?*

27. The letter written by Chief Margaret Okoth dated 17/7/2012 listed the defendant, the two plaintiffs and Ceasor as the surviving beneficiaries of the deceased Dickson Martin Jaoko. There was no mention of his surviving daughter **PHOEBE ANYANGO** who all the parties confirm is alive.

28. However when she applied for confirmation of grant dated 2<sup>nd</sup> November 2015 the supporting affidavit now listed her and the two children Ceasor Jaoko and Phoebe Onyango as the surviving heirs.

Things could have ended well at that point because the certificate of grant issued on 12<sup>th</sup> November 2015 revealed that she was getting 1.0 Hectares of the property while the two minors would get 3.0 ha to be

held in trust for them by the defendant and her brother **JOSEPH OMORO**.

29. However the plaintiff argues that this property should not even have been available for distribution solely to the estate of the deceased (Dickson) as the latter had fraudulently transferred it to himself yet this was ancestral family land belonging to their father. Jane admits that the same was ancestral land- so just how did it get transferred to the deceased's name?

30. Apparently after the death of the family's patriarch (Suleiman Ajuol Jaoko) on 7<sup>th</sup> March 1993, Dickson fraudulently transferred the same land to himself and to the exclusion of the other beneficiaries- which included the respondents. It was pointed out that the transfer form and the consent form the said Control Board were post humorously executed and filed by the late Suleiman on 7<sup>th</sup> October 1995, two years after his death. The green card confirms that Suleiman was the 1<sup>st</sup> registered owner of the parcel of land in question.

31. Apparently the Assistant Chief Margaret Okoth had earlier on written a letter to the Deputy Registrar High Court of Kenya, Homa Bay, dated 10<sup>th</sup> October 2014 relating to Succession Cause for the estate of Suleiman Jaoko Ajuol and the beneficiaries who included the plaintiffs, the two minors and the defendant.

32. The persons who had been issued with grant of letters of administration intestate in respect of the Estate of Suleiman Jaoko Ajuol were **FREDRICK MBOYA JAOKO** and **ERICK OCHIENG SOLOMON JAOKO** (the plaintiffs) in Succession Cause No.60 of 2015. There doesn't seem to have been an application for confirmation of the grant in that matter nor any proposed distribution of any asset.

33. If Suleiman had died by 1993 then the only way the land could have been transferred to Dickson was by way of transmission after filing of a succession cause in respect of Suleiman's estate and grant being confirmed. This never happened: it is not clear then what methods Dickson used to transfer the property to himself and the Land Registrar PW6 has informed this court that such transfer was irregular and improper. The claims by Jane that her husband purchased the land ring hollow as there is no sale agreement to confirm that and in any event who was he buying the land from, and when, since the owners had died long before transfer was effected.

34. I have no doubt in my mind that the asset under reference should not be included among the assets for distribution in the Estate of Dickson Martin Jaoko. The same rightly forms part of the estate of Suleiman Ajuol Jaoko, and the grant issued to Jane was obtained through fraudulent representation of material facts.

35. In any event the other beneficiaries i.e. Children of Suleiman were unfairly left out.

*1) Consequently the grant issued to Jane Omoro be and is hereby cancelled.*

*2) The Land Registrar Homa Bay is directed to rectify the register by cancelling registration under the name of Jane Auma Omoro and previously Dickson Martin Jaoko, the same must revert to the original owner Suleiman Jaoko Ajuol.*

36. As regards the sale agreement between either Jane or the family and Peter Midondo, I find that is a matter that does not fall within the succession cause, and parties can file appropriate claims in different cases.

37. I decline to direct that fresh grant issue to the plaintiffs – what the family must do is to discuss and agree who among the beneficiaries of Suleiman Jaoko Ajuol ought to file a cause for grant in respect of his estate.

38. Each party shall bear its own costs.

**Delivered and dated this 30<sup>th</sup> day of January, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**