



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

MISC. CIVIL APPLICATION NO.41 OF 2016

IN THE MATTER OF THE ESTATE OF:

RISPA AKONGO ODONGO DECEASED

BETWEEN

PHILIPS ODERO ODONGO 1ST APPLICANT

ROSELINE AWUOR ODONGO 2ND APPLICANT

ZIPRINA ATIENO ODONGO 3RD APPLICANT

HELLEN ACHIENG ODONGO 4TH APPLICANT

MILKA AUMA ODONGO 5TH APPLICANT

MARY AOKO ODONGO 6TH APPLICANT

VERSUS

VINCENT OUMA ODONGO 1ST RESPONDENT

CECILIA ISANDA 2ND RESPONDENT

MATHEW OMBUNA 3RD RESPONDENT

RULING

1. By a chamber summons filed on 29/11/2016 **PHILIPS ODERO ODONGO, ROSELINE AWUOR ODONGO, ZIPRINA ATIENO ODONGO, HELLEN ACHIENG ODONGO, MILKA AUMA ODONGO** and **MARY ODONGO** (the 1st - 6th Applicants) have sought that the grant of letters issued by the Court at Oyugis in Succession Cause No.70 of 2011 be revoked on grounds that two persons who were not beneficiaries of the estate were included.

2. Further that the letters were secretly and fraudulently obtained by the 1st Respondent (**VINCENT OUMA ODONGO**), without authorisation from the other six beneficiaries and he in fact deliberately concealed who the other three beneficiaries of the estate were.

3. The 1st respondent is also accused of failing to produce to court within the time prescribed, any such

inventory or account of administration as is required by **Section 83 (e) and (g) of Cap 160** of the **Laws of Kenya**.

4. They also urge the court to find that the transfer of land **parcel NO. WEST KASIPUL/KASIMBA/1884** to the 2nd and 3rd respondents (**CECILIA ISANDA** and **MATHEW OMBUNA**) as null and void for reasons that such sale which resulted from the irregular distribution of the estate was unlawful.

5. The applicants' father had three wives, the deceased (**RISPER AKONGO ODONGO**) was the third wife – had no children while the applicants were the children of the 1st and 2nd wives.

6. **RISPER** died intestate leaving behind parcel **NO. WEST KASIPUL/ KASIMBA/15** measuring 1.60 hectares yet the 1st respondent set out to apply for letters of administration only favouring him and the property aforementioned was distributed in his favour at 1.34 hectares and **CECILIA ISANDA** (2nd Respondent) and **MATHEW OMBUNA** (3rd respondent) getting 0.26 hectares by transfer. He did not mention the applicants who are his siblings.

7. The applicants fear that the 1st respondent intends to dispose of the entire estate to defeat the interest of the applicants and the estate will suffer loss.

8. In opposing the application the respondent insists that the applicants have given misleading information deliberately intended at misrepresenting the facts pertaining to the nullification of the grant of letters issued in the succession cause file at Oyugis. He denies that the cause was done in secrecy or fraudulently, and says that the claims made by the applicants are irrelevant and he lawfully succeeded, subdivided and duly transferred the property after the Succession Cause was finalized. The 1st Respondent is adamant that the applicants do not have any rights over the estate as 1st applicant has his own separate parcel of land which was also the deceased property and which the 1st applicant took for himself in whole.

9. At the hearing of the application the 1st applicant (who had written authority to act and argue the matter on behalf of the co-applicants) submitted that the two wives had seven children (six of them being the applicants plus the 1st respondent).

They were not aware that the 1st respondent had filed a Succession Cause in Oyugis.

10. One day while fencing the parcel, the 2nd and 3rd respondent came, claiming that they had bought the parcel and had even been registered as the owners. Apparently the parcel was sub-divided and resulted in the 1st respondent getting **NO. WEST KASIPUL/1883** where the 2nd and 3rd Respondents got parcel **NO. WEST KASIPUL/1884**.

11. The 1st applicant elaborated that their family comprised the following.

1st Wife – ISLIDA ABONYO and her children:

- **Philip Odero Odongo**
- **Roseline Awuor Odongo**
- **Ziprina Atieno Odongo**
- **Hellen Achieng Odongo**

2nd Wife - Silvia Onudi Akumu and her children:

- **Mary Aoko**
- **Milka Auma**

3rd wife – Risper Akongo Odongo - No child.

12. The 1st respondent does not deny filing the Succession Cause at Oyugis and subsequently obtaining grant of letters of administration in respect of the deceased herein.

He confirms the 1st applicant is the son of Odongo (their father) but says he has his share, and since the 1st respondent did not have any land, he filed the cause to enable him acquire the parcel constituting the deceased's property.

13. It is his contention that the 1st applicant has land and has even constructed thereon, whilst all the other applicants are his sisters who are married and are infact the ones who helped him to get the contested parcel. He is adamant that the 1st applicant was aware when he went to file the succession cause but did not show any interest. He however conceded that none of her family members were present in court when the grant was confirmed. He explains that he did not include them because all his sisters are after all married while the 1st respondent had left him to his own devices.

14. Under **Section 76 (1)** of the **Laws of Succession Act:-**

“A grant of representation ... may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion –

(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.”

15. In this instance there was deliberate concealment of material facts – the court was not made aware of the existence of the other siblings – whether they supported him in his quest or not – they were legal beneficiaries whose existence and identities ought to have been made known to the court at the onset when the petition for grant of letters of administration were filed. This was not done.

16. The issue as to whether the other beneficiaries were not entitled to the estate by virtue of being female and married cannot lie as it offends the provisions of **Section 27(1)** of the Constitution of Kenya which provides **“for equality of all persons irrespective of gender.”**

Further **Section 38** of the **Law of Succession** provides **“for equal distribution among all the children irrespective of their sex.”**

17. There is no evidence that any of the siblings were aware of filing of the cause and indeed even at the hearing of the confirmation of the grant, no hearing notice issued to the applicants was presented as a demonstration that the applicants had been made aware of the matter. I therefore hold and find that there was deliberate concealment of material facts which if the trial court had been made aware, would probably have made a different finding in terms of distribution of the estate.

18. Consequently I hold that the application is merited and I order that the grant of letters of administration issued to **VINCENT OUMA ODONGO** be and are hereby revoked.

2) The sale to the 2nd and 3rd respondent were the consequence of irregular proceedings and the same is declared a nullity.

3) By a copy of this ruling the Registrar of Lands at Homa Bay County is directed to cancel the transfer of the parcel now registered as **NO. WEST KASIPUL/KASIMBA/1883** registered in the name of **VINCENT OUMA ODONGO** and **WEST KASIPUL/ KASIMBA/1884** registered in the names of **CECILIA ISANDA** and **MATHEW OMBUNA**.

4) The parcel do revert to the original proprietor **RISPER AKONGO ODONGO** under its original number being **WEST KASIPUL/ KASIMBA/15** pending a proper succession cause.

5) The Respondents shall bear the costs of this application.

Delivered and dated this 24th day of March, 2017 at Homa Bay

H.A. OMONDI

JUDGE