



REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE NO. 1290 OF 2013
IN THE MATTER OF THE ESTATE OF
NORAH ONGATA alias NORAH ONGATA OKOYO (DECEASED)

AND IN THE MATTER OF APPLICATION BY

BETWEEN

GEORGE OMBIRO OBUNGA APPLICANT

AND

CHARLES OGUTU OCHIRI PROTESTOR/RESPONDENT

RULING

1. The dispute herein revolves around the estate of **Norah Ongata Okoyo** who died on 28th August 1978. The dispute is between **George Ombiro Obunga** (“Obunga”) as the applicant and **Charles Ogutu Ochiri** (“Ochiri”) as the protestor.
2. Before I deal with the substance of the matter, it is important to set out some background. These proceedings were commenced through a citation issued by the protestor to Hellen Ojow and Lawi James Achach as the beneficiaries of the deceased’s estate in *Siaya SPMC Succession Cause No. 24 of 2012*. On 9th August 2012, the court allowed Ochiri to apply for letters of administration for the estate. In due course, he filed the petition and a grant of representation was issued and confirmed on 29th April 2013 and 21st March 2014 respectively. Consequently, Ochiri became the registered proprietor of the land parcel **EAST GEM/RAMULA/168** (“Plot 168”).
3. On 15th July 2016, Obunga filed a summons to revoke the grant of letters of administration issued to Ochiri on grounds that he was not a beneficiary of the deceased and that the grant was procured by non-disclosure of fundamental facts regarding the estate of the deceased. When the matter was placed before me, I revoked the grant issued to Ochiri and issued a grant of letters of administration intestate to Obunga and James Lawi Achach (“Achach”). I further directed the administrators to apply for confirmation within 30 days from the date of the grant and cancelled the registration of Plot 168 in the name of Ochiri since it was evident he claimed only part of the property.
4. On 16th December 2016, Obunga filed that summons for confirmation while Ochiri filed the affidavit of protest on 2nd February 2017. I thereafter heard the application by oral testimony.
5. Ochiri (PW 1) testified that Plot 168 comprised two separate parcels of land of 4 acres each. One parcel

belonged to the deceased while the other belonged to his late father, Kado Ochiri. He told the court that during adjudication the two parcels were mistakenly joined and registered as one in the name of the deceased. Ochiri told the court that this anomaly was not discovered until both the deceased and his father had died and he made a complaint about the same to the now defunct Siaya District Land Disputes Tribunal. The Tribunal found in his favour. Ochiri further stated that he was only interested in part of the land that belonged to his father.

6. The deceased's daughter in law, Hellen Atieno Ojowi (DW 1), testified on behalf of Obunga. Her husband, Wellington Ojow, was the son of the deceased and he had two brothers who were both deceased. She told the court that she was married in Ramula in 1963 and could not recall seeing Ochiri's father at the time. She also stated that she had never seen Ochiri and his family on that part of the land and did not know how he commenced succession proceedings. Her position was that Ochiri did not have any claim to the estate as all the land belonged to the Norah Ongata family.

7. I have reviewed the evidence and depositions and the record of proceedings before the Siaya Land Disputes Tribunal. The proceedings before the Tribunal show that the deceased's parcel of land initially comprised two parcels of land; one part belonging to the deceased and the other part to the protestor's father. Ochiri testified that his father used the land until his death in 1971 and he took over the farm. The deceased's son, Wellington Ombiro acknowledged the fact that local elders had intervened in the matter under the then Chief of East Gem Location and apportioned the land between the two families. At the time Ombiro was not averse to the land being sub-divided accordingly. The testimony of DW 1 before this court that she did not know the objector is unfounded because it is her husband who acknowledged that the objector's father had an interest in the land.

8. I therefore find and hold that Ochiri entitled to part of Plot 168. However, before I confirm grant, it necessary to define the boundaries of the land occupied by the parties. I therefore order as follows;

(a) The District Commissioner and County Surveyor shall determine the area of EAST GEM/RAMULA/168 which Charles Ogutu Ochiri is entitled to, taking into account the historical boundaries and subdivision and the part occupied by the family of Norah Ongata, and shall prepare and file a report before this court within forty-five (45) days.

(b) Parties are at liberty to apply for further and other orders.

DATED and DELIVERED at KISUMU this 24th day of April 2017

D. S. MAJANJA

JUDGE

Mr Anyul instructed by Anyul and Company Advocates for the applicant.

Mr Ogonda instructed by Maxwell O. Ogonda and Associates Advocates for the protestor/respondent.