



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT HOMA BAY
SUCCESSION CAUSE NO.748 OF 2015

IN THE MATTER OF THE ESTATE OF: J A, P N AND C M (DECEASED)

AND

C A O.....PETITIONER

VERSUS

J A O.....1ST RESPONDENT

M A O.....2ND RESPONDENT

RULING

1. Following the deaths of **P N** and her two co-wives **J A** and **C M**, their only surviving kin **J A O** petitioned for grant of letters of administration of their estate. **J** is the daughter of **J A**.
2. The deceased were wives of **H O** and joint owners of **PARCEL NO. KABUOCH/KACHIENG/[particulars withheld]**. **J** included her daughter **M A O** as her co-administrator. The grant was confirmed in her favour on 1st March 2016 and the estate distributed in her favour and her children.
3. The applicant got to learn later that the parcel was now registered in the names of the petitioners/respondents who were bringing in surveyors with a view to sub-divide the land and sell it.
4. She became suspicious and tried to lodge a caution but the District Land Registrar rejected this saying **J** was already a co-owner.
5. Incidentally when the applicant conducted a search the records at Lands Office showed that her late husband **J O O** was a joint owner of the land as at 1st March 2015, yet the said deceased **J** had died on 26th February, 2012. The applicant argues that **J** has fraudulently imposed her children as beneficiaries, while leaving out the family of **J O O**.
6. In response **J A D O** (1st Respondent) admits that her late father **H** gave the late **J O O** a parcel of land **NO. KABUOCH/KACHIENG/[particulars withheld]** which is registered in the name of the said **J O O** as per the search certificate marked **JAG**.
7. This is the parcel where **J O** settled on upto 1998 when for reasons best known to him, after **H** died, he secretly included his name as co-registered proprietor with her three mothers as per search certificate **JAO 4**.

8. However realizing the legal position, now that **J** was indicated as co-owner, she willingly forfeited 2.8 Hectares to his dependants as shown in search certificate **JAO 5** although she had omitted their names when she filed the succession cause.

9. The applicant seeks nullification of grant issued to **J A O** and **M A O**. She also seeks orders of rectification and that the District Land Registrar do issue a caution on land parcel **NO. KABUOCH/KOCHIENG/[particulars withheld]** on grounds that the petitioners (Respondents) fraudulently concealed the fact that the applicant **C A O** and her children are entitled to inherit part of the land.

10. The applicant stated that she got married to the late **J O O** in the year 2005 with whom they had three issues namely:-

- **V A O** – 11 YEARS
- **A G O** – 11 YEARS
- **R P O** – 10 YEARS

11. **J O** had lived on parcel **NO. KABUOCH/KACHIENG/[particulars withheld]** since the year 1970, as that parcel had been given to him by his grandfather **W O**. Apparently his grandfather had three wives namely:-

- **P N** – Childless
- **J A** – who divorced him and was the mother of **J A**
- **C M** – childless

12. So on account of his “**unproductive**” status he invited the late **J O O** to go and live on that parcel with him. When **J** died he was buried on the said parcel.

What is the dispute herein?

13. **J** in her reply affidavit admits that the dependants of **J** are entitled to a share – whatever the explanation. It seems there is some manipulation of records at Lands Office as how John got registered is not clear.

14. I think for purposes of setting the record straight she ought to have included them in the proposed mode of distribution from the onset. To have failed to disclose that amounted to concealing material facts which if the court had been informed would have resulted in different decision.

15. It is for this reason that I hold the application for annulment of the grant be nullified only to the extent that the distribution left out persons acknowledged as being duly entitled to a share.

16. The petitioners/Respondents are directed to surrender the certificate of grant issued for cancellation and to file a fresh proposed mode of distribution taking into account the share due to the applicant. This must be complied with within 14 days hereof.

17. Matter be listed for mention to confirm compliance and confirmation of new proposals on 16/08/2017.

18. By a copy of this ruling the Land Registrar at the Homa Bay is directed to cancel the registration entered subsequent to the confirmation and the title reverts to the earlier registered owners pending proper distribution.

Delivered and dated this 1st day of August, 2017 at Homa Bay

H.A. OMONDI

JUDGE