



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 132 OF 2014

IN THE MATTER OF THE ESTATE OF OCHIENG OUMA----DECEASED

AND

CHRISPINUS OUMA MAKUDA.....PETITIONER

VERSUS

PASKALIA AKOOCHI INZIANI.....OBJECTOR

RULING

1. It is said that Ochieng Ouma (the Deceased) died on 20th October 1973 at the age of 64 years. This was just about four months after he had been registered as the proprietor of the Land Parcel known and described as Samia/Butabona/89. He died Intestate.

2. Through a Petition presented on 18th May 1993, Chrispinus Ouma Makuda (The Petitioner) applied for Grant of Letters of Administration Intestate to the Estate of the Deceased. In that Petition he described himself as the son of the Deceased and named Stephen Ouma Makuda and Justus Ouma Makuda as the other persons surviving the Deceased. On 24th May 1995, the Court made a Grant of Letters to the Petitioner and the same were confirmed on 12th February 1995. At confirmation each of the persons surviving the Deceased were to get equal shares.

3. That Grant however faces a challenge by way of Summons of Revocation through an Application dated 9th April 2014, in which Paskalia Akoochi Inziani (the Objector) seeks the following payers:-

- a. **That pending interpatas and or determination of this application there be registered a restriction of titles LR No. Samia/Butabona/1395, 1396, 1397 or any other parcel with origin from Samia/Butabona/89.**
- b. **That the grant issued on 24.5.1994 and confirmed on 17.2.1995 be and is hereby revoked/annulled.**
- c. **That a fresh/amended grant be issued to Paskalia Akochi Inziani**
- d. **That submissions/partition of LR Samia/Butabona/1395, 1396 and 1397 be cancelled, to restore LR Samia/Butabona/89.**
- e. **That Land Parcel No. Samia/Butabona/89 be restored and the deceased- Ochieng Ouma registration (entry 1) of 27.6.1973 be restored.**
- f. **That the names of Chrispinus Ouma Makunda, Stephen Ouma Makunda and Justus Ouma be deleted from this proceedings.**
- g. **That costs be provided for.**

4. In the affidavit in support of the Summons the Objector tells Court that when the Deceased died he was survived by the following –

- a. Felester Akelo Ochieng – widow
- b. Paskalia Akocho Inziani – daughter
- c. Anjelina Atieno Ochieng – daughter
- d. Adelite Anyango Ochieng – daughter.

Alongside the Summons, the Objector filed a written authority from Anjeline and Adelite to the filing of the Summons.

5. The Objector avers that the Petitioner committed a fraud when he allegedly described himself as the son to the Deceased when he was not. It was further averred by the Objector that the Petitioner, Stephen Ouma Makuda and Justus Ouma Makuda are the children of one Zakiel Makuda and are not entitled to a share of the Deceased Estate.

6. In response to the Summons, the Petitioner swore a Replying affidavit on 11th February 2015. He conceded that he was the son of Ezekiel Ouma Makuda and Fais Achola. The Petitioner explains that the Deceased herein and his father Ezekiel were brothers and sons of the Late Ouma Kamakunda.

7. The averment of the Petitioner is that upon the demise of his father, the Deceased inherited his father's wives but they later disagreed and separated from them. The Petitioner also states that the family of the Deceased constituted the following-

- i. Anyim – wife (Deceased)

Aoko – daughter

- ii. Naburi –wife (Deceased)

- iii. Felesta Akello – wife (Deceased)

Asa – daughter

Paskalia – daughter

Justus Ouma – son

8. A contention by the Petitioner is that although registered in the name of the Deceased, land parcel Samia/Butabona/89 was ancestral land that belonged to their grandfather Ouma Kamakunda. He also states that in the Succession cause Asa and the Objector got their share of land through their brother Justus.

9. This matter should be disposed fairly quickly. There is concession by the Petitioner that he is not the son of the Deceased. That is a concession that the Statement he made in the Petition for Grant to the effect that he was the son to the Deceased was false. There is further concession by the Petitioner that the Objector herein is the daughter of the Deceased. That is a concession that she and not him has priority to the Grant of the Letters of Administration to the Estate of the Deceased.

10. The gravamen of the Petitioner's case is that land now constituting the Deceased Estate was ancestral land. This stated in paragraph 8 and 19 of the Petitioner's Replying Affidavit of 11th February 2015 which reads-

(8) That the land registered in the name of Ochieng Ouma constitutes our ancestral that belonged to my grandfather Ouma Kamakunda

(19) That the land in question was never the exclusive property of the Applicant's

father but was ancestral and also meant for me and other family members.

11. There is a concession by the Petitioner's Counsel in his written submissions that the competing rights of the parties herein to the Estate land need to be adjudicated and declared in a Court with jurisdiction. That is what the Petitioner ought to have done in the first place instead of seeking Grant of Administration to the Estate of the Deceased.

12. The Decision I reach is that, I should allow the Objector's application in its entirety. The Summons of 9th April 2014 is hereby allowed as prayed with costs.

13. Perhaps I should sound a warning to the Objector. The Grant that has now issued to her is not a license for her to evict the persons currently occupying the land . She will have to seek their removal by way of due process. The occupants may have a good defence to such a move. I do not know! Another Court will have to make that decision.

Dated and signed and delivered at Busia this 20th day of January 2016.

F. TUIYOTT

J U D G E

In the presence of:-

Oile -C/Assistant

Wanyama - for the Petitioner

Fwaya - for the Objector