



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CASE NO.552 OF 2007

IN THE MATTER OF THE ESTATE OF: PHILIP ODERA OWI – DECEASED

AND

**IN THE MATTER OF AN APPLCIATION BY: (1) MARGARET ANYANGO ODERA (2)
ALBERT ODHIAMBO OWII**

AND

IN THE MATTER OF AN APPLICATION BY:

PETER OCHOLA ODERAOBJECTOR/APPLICANT

J U D G M E N T

The late PHILIP ODERA OWI who died on 1/8/2006 had married 2 wives namely:

- (a) Christine Atieno Odera**
- (b) Margaret Anyango Odera**

They were blessed with the following children from Christine's house:

Lilian Achieng and Peter Ochola Odera. From Margaret's house: **Winstone Osaye Odera, Joseph Adhiambo Odera, Christine Atieno Odera, Monica Auma Odera and Joseph Okongo Odera.**

Christine has since passed on as well as Lilian Achieng Odera. The remaining objector Peter Odera took out letters of administration on behalf of her estate.

The objection proceedings herein relate to the grant issued on 7.2.2008 and confirmed on 5.11.2009 to Margaret Anyango Odera and Albert Odhiambo Owi. According to the applicant the name of Lilian was deliberately left out whereas Peter Odera was not involved in the process at all.

When this matter came up for oral evidence, the respondents did not turn up despite being served. There is no evidence also on record to suggest that they have even filed any documents in opposition to the revocation proceedings.

The objector nonetheless proceeded to testify that although Lilian had passed on (after filing the objection

proceedings) she was the first born child to the deceased from the first house. Prior to her death she left behind the following children:

(a) Esther Akoth;

(b) Dorine Adhiambo;

(c) Cecil Akinyi;

(d) Effie Anyango.

According to him the letters from the chief which he produced as evidence failed to mention the late Lilian. The respondents apparently despite knowing her existence and the fact that she did not renounce her right in the estate did not include her. Further despite being apportioned some part of the estate he testified that he was never privy to the same and he was never consulted. He said that the estate was generally schewed in favour of the second house.

I have perused the evidence on record especially the forms duly filled by the petitioners. The letter dated 23.2.2007 from the chief does not mention the late Lilian although it indicates that of Peter Ochola Odera.

Further during the confirmation of grant, it's always a requirement as well as when petitioning that the administrators seek the consent of the beneficiaries. In this regard, there is no evidence that there was any consent from the beneficiaries. A mere mention or indication of the objector's name in the P&A 5 form does not prove that his consent was obtained.

In terms of the provisions of the Law Section 51(2) of the Law of Succession Act Cap 160 is instructive, The same states as follows:

51 (2) "An application shall include information as to

a).....

(g) The cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased and of the children of any child of his or hers then deceased."

Consequently and as rightly submitted by Mr. Njoga counsel for the objector/applicant there was every reason to include the names of the entire beneficiaries including Lilian.

In the premises, and without going into the other merits of the objection namely that there was unfair distribution of the estate, I find that the fact of leaving out one beneficiary is sufficient to allow the objection. In terms of consanguinity the late Lillian had every priority in getting a share of her father's estate. The absence of any response from the petitioners clearly demonstrates their complicity.

The grant of letters of administration issued on 7.2.2008 and confirmed on 5.11.2009 are hereby revoked and or annulled. This being a family dispute each party shall bear their respective costs.

Dated, signed and delivered this 18th May 2016

H. K. CHEMITEI

J U D G E

