



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**PROBATE AND ADMINISTRATION CASE NO. 99 of 2002**

**IN THE MATTER OF THE ESTATE OF THOMAS OPICHO NAMUNG'OMA....DECEASED**

**AND**

**PATRICK SIANGI OPICHO..... PETITIONER**

**AND**

**HAROLD WAFULA OPICHO..... OBJECTOR**

**MARY NALIAKA OPICHO.....1<sup>ST</sup> INTERESTED PARTY**

**JEREMIAH NAMUNG'OMA OPICHO.....2<sup>ND</sup> INTERESTED PARTY**

**JUDGMENT**

1. The Petitioner **PATRICK SIANGI OPICHO** petitioned the court for grant of letters of administration on the 25th of October, 2002.

2. A grant was issued on the 12<sup>th</sup> of March, 2003. The same was confirmed on the 26<sup>th</sup> of July, 2004.

The only asset of the deceased was property **L.R. Malakisi N & C Namwela/1** which was to be shared among his sons as follows

1. Patrick Siangi Opicho – 4 acres
2. Wilberforce Opicho – 4 acres
3. Wycliffe Wamalwa Opicho – 5 acres
4. Ronald Wangila Opicho – 5 acres
5. Maurice Nyongesa Opicho – 4 acres
6. Eddiga Simiyu - 4 acres
7. Robinson Libusi Opicho – 4 acres
8. Tom Juma Opicho – 5 acres

9. Harold Wafula Opicho – 5 acres
10. Bernard Opicho – 4 acres
11. Collins Opicho – 4 acres
12. Jeremiah Namung'oma Opicho – 5 acres

3. From the record an Objection to the confirmation of the grant had been filed by one **JEREMIAH NAMUNG'OMA OPICHO** on 12<sup>th</sup> January, 2004. The same has been pending and in an affidavit dated 23<sup>rd</sup> of April he has deponed that the petitioner has cause to be divided the property into 28 shares and given titles to people unknown to the State.

4. On the 8<sup>th</sup> of June, 2005 the court was moved on account of Rachael Mbuita Opicho a widow of the deceased who claimed to have been left out of the distribution. Indeed a close look at the petition she is included as a the beneficiary but her name is omitted altogether at the point of distribution.

5. In the fray joins Harold Wafula Opicho who filed the application for revocation dated 18th June, 2014 claiming that he is yet to get his father's share of 5 acres which he was to hold in trust for his mother Mary and the rest of the family and that the petitioner did not comply with the confirmed grant in the distribution of the estate further that the petitioner subdivided the property in 28 parcels no 12 and has shared out the property to others not on the distribution list.

6. In support of his application he annexed a green card showing the following details; that property **L.R. No. Malakisi/A & C Namwela** is approximately 55 acres and registered in the names of Thomas Opicho on the 25<sup>th</sup> of August 1964 that on 3rd of August, 2008 the interest registered against it are follows

Patrick Siangi Opicho – 4 acres

Wilberforce Opicho – 4 acres

Wycliffe Wamalwa Opicho – 5 acres

Ronald Wangila Opicho – 5 acres

Maurice Nyongesa Opicho – 4 acres and they are registered as trustees for themselves and others as per their shares.

There is also a caution registered on 8.6.2007 by Rachael Mbuiira Opicho claiming a beneficiary interest. He has also attached a certificate of search of **L.R. Malakisi/N. Namwela** indicating that 6.10 Ha were registered in the names of Patrick Siangi Opicho on 15.6.05 and with the same he acquired a loan. The search is dated 3.4.2008. There is also a title **S. Malakisi A & C Namwela/1223** in the name of Sarah Inguza Amboga.

7. In his response to the various allegations the petitioner states inter alia that Rachel is his step mother who left after his father's death and re-married elsewhere, she returned after distribution of the estate and is being housed by Richard Wanga Opicho and does rotational farming on any of the sons' shambas. This has been denied by Rachel who says that she has to hire space for cultivation. He has also explained who Sarah Vuguza Amboza is and why she has a share of the estate, however he does not explain why there is non-compliance with the confirmed grant and why he and 3 others were registered as trustees yet this was not in accordance with grant, he does not also explain either how he ended up owning 6.01 ha. of the said property.

8. What is clear to the court is that the petitioner has mismanaged the estate and failed to administer the same honestly, truthfully and diligently as is required of a petitioner/administrator, he has not shared the

property as listed in the confirmed grant and further in the list of distribution he did not provide for the widows and in particular Rachel who had no son and whose daughter though married away, died and she has been left a destitute.

9. In the circumstances of this case and more particularly for the reasons enumerated above I make the following orders;

- 1. That the confirmed grant issued on the 26th day of July, 2004 be and is hereby revoked.**
- 2. The appointment of one Patrick Siangi Opicho be and is hereby cancelled.**
- 3. All subdivisions from the title N. Malakisi/ N & C Namwela/1 are hereby cancelled and I direct that the original title do revert back to the original owner THOMAS OPICHO NAMUNG'OMA until further orders of the court.**
- 4. The 3 homes of the deceased do avail names of 3 administrators who will oversee distribution of the estate in a fair and equitable manner.**
- 5. Costs in the cause.**

**Dated at Bungoma this 28th day of July, 2016.**

**ALI-ARONI**

**JUDGE**