



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 806 OF 2010**

**IN THE MATTER OF THE LATE: JOHN OLONDO MBOK.....DECEASED**

**AND**

**IN THE MATTER OF: JOSEPH WERE ABALA.....APPLICANT**

**VERSUS**

**RICHARD ONYANGO ABALA.....RESPONDENT**

**J U D G M E N T**

1). The deceased herein John Olondo Mbok died on 3-6-2010. According to P & A form 5, he did not marry and therefore he left behind the following:

1. **Joseph Were Abala – Brother**
2. **Joanes Aumba Samba – Brother**
3. **Rose Atieno Ayange – Sister-in-law**
4. **Peter Oluoch Were – Brother**
5. **Vincent Omondi – Brother**

2). Both Joseph Were Abala and Richard Onyango Abala were made joint administrators of the estate. It appears from the affidavits herein that Richard Abala is a first cousin to the deceased. The dispute therefore herein is how to distribute the only property left by the deceased namely Kisumu/Kolunje/897 measuring 3.8. Ha. Both parties did file their respective proposed mode of distribution.

3). Richard Abala proposed that the suit property be distributed as follows:

- (i) - **Richard Onyango Abala**
  - **Bernard Ochieng Omondi**
  - **Maurice Onyango Omondi**

do get 3.0 Ha and divide it equally among themselves

- (ii) **Philip Owino Ongwech gets 0.8 Ha.**

Philip Ongwech is the son to the late Dismas Abala while Bernard Omondi and Maurice Omondi are the

sons of the late Raphael Abala.

4). Richard Abala proposes that Joseph Abala his co-administrator did benefit from land parcel number Kisumu/Kolunje/1176 given to him by their later father and has been living therein since 1988. This was never contested by Joseph Abala.

5). On the other hand Joseph Were Abala has proposed his mode of distribution as follows:

**(i) Maurice Onyango Omondi and Bernard Omondi, the sons of Raphael Omondi do get 0.88 Ha.**

**(ii) The following purchasers be given their portions as follows:**

- a. **James Omolo Kaila – 0.32 Ha**
- b. **Philip Ateng Aguk – 0.32 Ha**
- c. **Florence Ayuma Benjamin – 0.17 Ha**
- d. **Nathaniel Onyango Gondi – 0.14 Ha**

**(iii) Magwar Model Secondary school - 1.64 Ha**

**(iv) Richard Onyango Abala - 0.33 Ha**

6). He further deponed that he will be satisfied together with Evans Otieno, Ongwech Philip Owino Ongwech, and Vincent Ochieng Ongwech with what they shall inherit from the estate of his father one Peter Bala Opiyo deceased.

7). My understanding of the above mode of distribution is that Joseph Were Abala has no claim over the deceased estate herein. This is buttressed by the assertion by Richard that he already owns Kisumu/Kolunje/1176 and a copy of official search was attached in his affidavit.

8). The other significant issue which ought to be considered is the fate of the purchasers. No evidence was led to show that the deceased sold his land to them. The issue regarding the school seemed to have been addressed by Richard when he attached a letter dated 20-8-2010 addressed to the District Commissioner Kisumu West. In that letter Richard seemed to have been acting on behalf of the deceased. Other than that there is no sufficient evidence that the school is built on the said property or not. In any case if there was any compensation given then the same was not established. Significantly though, at the time the letter was written the deceased had died, and one is left wondering whom the school was talking to. In other words nobody had sought out letters of administration on behalf of the deceased estate so as to enable him or her agitate on behalf of the estate.

9). As regards the other purchasers, no evidence was lead to show that the deceased sold the land to them. Save for the photographs, which shows houses constructed, there is no evidence indicating that they are constructed on the suit parcel. In any case both administrators differ on how the alleged purchasers entered the suit property.

10). This therefore leads me to determine how the estate ought to be distributed. Having gone through the affidavits I find that the suit land ought to be distributed as follows:

1. **Richard Abala – 1 Ha.**
2. **Bernard Ochieng Omondi – 1 Ha.**
3. **Maurice Onayngo Omondi – 1 Ha.**
4. **Philip Owino Ongwech – 0.8 Ha.**

11). As stated above, Joseph Were Abala had been given land parcel No. Kisumu/Kolunje/1176 measuring 1 Ha by his father which he has lived since 1988. I think this is not disputed and it is sufficient compensation.

**12).** Consequently, let the grant be confirmed and let parcel Kisumu/Kolunje/867 be distributed as stated above. This is a family matter and I shall therefore order each party to bear their own costs.

Orders accordingly.

**Dated, signed and delivered at Kisumu this 20th day of April, 2015.**

**H.K. CHEMITEI**

**JUDGE**