



REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE NO. 142 OF 2015
IN THE MATTER OF THE ESTATE OF
SOLOMON ODWAR ANYANGO (DECEASED)

BETWEEN

DAN OUYA KODWAR APPLICANT

AND

SAMWEL OTIENO ODWAR PETITIONER/ RESPONDENT

RULING

1. The application before the Court is one for revocation of the grant of letters of administration issued and confirmed in respect of the estate of SOLOMON ODWAR ANYANGO who died on 17th April 1985. It is not in dispute that he had three wives; Penina Atieno Odwar, Silpa Adhiambo and Jenipher Akoth who are all deceased. He was also survived by several children in each house.
2. The respondent, Samwel Otieno Odwar, a son of the deceased from the third house petitioned for and was issued with a grant of letters of administration intestate in ***Migori SPM Succession Cause No. 363 of 2000***. The grant was confirmed on 3rd July 2001 and the only property of the deceased **NORTH SAKWA/KADERA LWALA/455** given to him.
3. The applicant, a son of the deceased from the 2nd house, now seeks revocation of the grant on the ground that the petitioner failed to disclose all the survivors of the deceased's estate and obtain their consent, that he has now transferred the property to himself and that the Court has no Jurisdiction to deal with the matter, given that the value of the land is above Kshs.100,000/-. This fact is impliedly admitted by the appellant as FORM P & A 5 states that the land is valued at Kshs. 200,000/-. He also complains that the applicant has subdivided **NORTH SAKWA/KADERA LWALA/455** into two portions No. 1548 and No. 1549 which he had transferred to himself.
4. In his replying affidavit, the respondent admits that he took out the petition and followed due process as he was nominated by the family which is a large one. He imputes bad faith on the applicant who has failed to take steps to set aside the grant after 14 years. In any case he depones that the purpose of the subdivision is to distribute the property.
5. What emerged from my discussions with family members present in court in a bid to resolve the matter, is that the deceased had distributed the land to his respective wives prior to his death and

each of his children now occupy their respective portions. The issue as I see it is to ensure that distribution is completed with the consent of all survivors in accordance with the deceased's expressed wishes.

6. Nevertheless, the jurisdiction of this Court to revoke or annul the grant is clearly set out in **section 76** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)*. Apart from the jurisdictional issue, I would add that in distribution, the Court confirming the grant is obliged to identify the share of each beneficiary before confirming the grant. The proviso to **section 71** of the *Law of Succession Act* states that, “*Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.*” It was thus improper for the court to give the respondent the whole of the property when the other beneficiaries were entitled to specific shares.
7. For the reasons I have given, I therefore revoke the grant of letters of administration intestate issued to the respondent on 17th January 2001 and confirmed on 3rd July 2001 in *Migori SPMCC. Succession Cause No.363 of 2000*. Consequently, I make the following orders;
 - a. A fresh grant shall issue to **Dan Ouya Kodwar, Samuel Otieno Odwar and Meshack Abade** forthwith.
 - b. The administrators thereafter shall or any of them present an application for confirmation of grant within 30 days from the date hereof.
 - c. For the avoidance of doubt subdivisions known as **NORTH SAKWA/KADERA LWALA/1548 and 1549** are hereby cancelled.
 - d. There shall be no order as to costs.

DATED and DELIVERED at MIGORI this 13th day of April 2015.

D.S. MAJANJA

JUDGE

Mr Oguttu-Mboya instructed by Oguttu-Mboya and Company Advocates for the applicant.

Respondent in person.