



REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE NO. 300 OF 2014
(FORMERLY MIGORI PM'S COURT SUCCESSION CAUSE NO. 63 OF 2009)

IN THE MATTER OF THE ESTATE OF
PARASIS NYAWANDA RADINDA (DECEASED)

BETWEEN

MOURICE OCHIENG OGUNDO

EVERLYN AUMA OBOTE

VICTOR OUMA APPLICANTS/OBJECTORS

AND

LEONIDA ACHILA ODUNDO &

BENEDETA AKELO NYAWANA ADMINISTRATORS/RESPONDENTS

RULING NO. 3

1. On 17th April, 2014, I ruled as follows in respect of the objector's application to revoke the grant issued and confirmed on 30th September 2014.

I have considered the application dated 8th April, 2015 and in my view, the only person left out in the distribution is Everlyne Auma Obote who is the daughter of Yahanas Obote Odundo. I have applied the equality principle to distributing the estate and I direct the members of the family to agree on distribution to accommodate Everlyne Auma Obote. In the meantime, the proposed subdivision shall as much as possible respect the parts where parties already occupy. To enable the parties [settle] this matter will be mentioned on 15th May, 2015 for final orders. In the meantime, the interim orders remain in place.

2. I gave the parties the opportunity to discuss the matter. It appears the parties were unable to sit down and agree on a joint proposal. The respondents propose that the property **SUNA EAST/KAKRAO/145** be divided as follows'
 - i. Leonida Achola Odundo 0.28 (Ha)
 1. Benedeta Akelo Nyawana 0.28 (Ha)
 2. Nicholas Odhiambo Odundo 0.25 (Ha)

3. Peter O. Odundo	0.25 (Ha)
ii. George Ouma Odundo	0.25 (Ha)
iii. Fredrick O. Odundo	0.25 (Ha)
iv. Christine Ojwang Odundo	0.25 (Ha)
v. Monica Atieno Mwita	0.25 (Ha)
vi. Christine Akoth Odundo	0.25 (Ha)
vii. Jenifa Auma Odundo	0.25 (Ha)
viii. Mourice Ochieng Odundo	0.28 (Ha)
ix. Victor Otieno Odundo	0.28 (Ha)
x. Everlyne Auma Obote	0.20 (Ha)

3. The objectors did not accept this on the ground that they preferred that the property be distributed in accordance with his father's wishes which is in accordance with Luo customary law.
4. **Section 40** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)** provides how the estate of a polygamous household should be distributed. In the case of **Rono v Rono & Another [2005] 1 KLR**, the Court of Appeal stated that:

*The application of customary law, whether Marakwet, Keiyo or otherwise, is expressly excluded unless the Act itself makes provision for it More importantly, **Section 40 of the Act** which applies to the estate makes provision for distribution of the net estate to the "houses according to the number of children in each house but also adding any wife surviving the deceased as an additional unit to the number of children.*

5. If the objector's proposition were accepted, then the deceased property would only be distributed to the male heirs. The Constitution and substantive law gives emphasis to the principles of non-discrimination and that children of a deceased person, their gender or marital status notwithstanding are entitled to their parents' estate in equal measure.
6. The proposal by subdivision plan proposed by the applicants adheres as much as possible to the principle of equality and fairness. I have considered the supporting affidavit of Maurice Ochieng Odungo and it does not disclose the fact that the deceased made *inter vivos* gifts of land to the other members of the family which I would have taken into account. In any case the objectors end up having slightly more land than the other beneficiaries.
7. In order to bring this matter to conclusion I revoke the grant issued on 23rd September 2014 and confirmed on 11th December 2014 and now confirm the grant in the manner proposed by the applicants as set out in paragraph 2 above save for the following portions

Leonida Achola Odundo 0.26 (Ha)

Benedeta Akelo Nyawana 0.26 (Ha)

Everlyne Auma Obote 0.24 (Ha)

8. The subdivision of the property shall as much as possible adhere to the part already settled by the beneficiaries.
9. There shall be no order as to costs

DATED and DELIVERED at MIGORI this 22nd day of June 2015

D.S. MAJANJA

JUDGE

Mr Ogari instructed by B. N. Ogari & Company Advocates for the applicant/objector.

Petitioners/Respondents in person.