



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1787 OF 2001
IN THE MATTER OF THE ESTATE OF
ALEXANDER OTIENO MUDHUNE (DECEASED)

SISILIA AWINO OTIENO.....PETITIONER

VERSUS

BENTA AUMA OTIENO.....1ST OBJECTOR

AUSTINE MUDHUNE.....2ND OBJECTOR

JUDGMENT

1. The deceased Alexander Otieno Mudhune died intestate on 19th January 2001. His widow (the petitioner) petitioned for grant of letters of administration intestate. The grant was issued to her on 2nd November 2001. She had three children with the deceased. When she applied for confirmation of the grant, a protest was filed by the objectors. The 1st objector's case was that she was the second widow of the deceased with whom she had got nine (9) children including the 2nd objector. The objectors complained that the petitioner had not informed them that she was petitioning for the grant, had not got their consent, and that the proposed distribution had excluded them. The petitioner responded to the protest by claiming that the deceased had no other family. The objectors died during the course of the Cause. The protest was taken over by the objector's daughter Beatrice Adhiambo Otieno.

2. When I took the evidence of the petitioner, it was clear that although she had a monogamous relationship with the deceased, he subsequently married the 1st objector with whom he had children. The 1st objector was settled on the deceased's Solai/Ndigiri 3/1317 while the petitioner was settled on Siaya/South Ugenya/1429. Under **section 3(5) of the Law of Succession Act (Cap. 160)** the 1st objector (Benta Auma Otieno) was a wife to the deceased for the purposes of succession, and her children were accordingly children within the meaning of the **Act (MUIGAI .V. MUIGAI AND ANOTHER [1995-1998] EA 206)**.

3. The deceased left LR Nakuru Municipality Block 3/425 on which are tenants who pay rent which is presently collected by the children of the 1st objector. They manage the premises.

4. I confirm the grant that was issued to the petitioner. Land parcel Solai/Ndigiri 3/1317 shall be registered in the names of Beatrice Adhiambo Otieno, Lucy Otieno and Aphline Otieno to hold in trust for the household of 1st objector Benta Auma Otieno, and half of the land parcel Siaya/South Ugenya/1429 shall be registered in the name of the petitioner to hold in trust for herself and for James Otieno Owino. There is dispute over the administration of rent from LR Nakuru Municipality Block 3/425, and the petitioner and her family live in Siaya. I ask that both the petitioners and Beatrice Adhiambo Otieno get the property to be valued and sold and the proceeds shared so that the petitioner gets 1/3 and the house of Benta Auma Otieno 2/3. I have considered the number of children in the 1st objector's house (**section 40 of the Law of Succession Act (Cap. 160)**).

DATED this 25th day of **September 2015**.

A.O. MUCHELULE

JUDGE

SIGNED and **DELIVERED** this 29th day of **September 2015**.

M. MUIGAI

JUDGE