



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO.158 OF 1991

IN THE MATTER OF THE ESTATE OF: MARIKO MBUGA OUKO – DECEASED

AND

IN THE MATTER OF AN APPLICATION BY; RAPHAEL JUMA MBUGA – APPLICANT

AND

IN THE MATTER OF AN OBJECTION BY; MARY ODUOR MBUGA

J U D G M E N T

The applicant's chamber summons dated 14/11/11 prays that the grant of letters of administration issued to **RAPHAEL JUMA MBUGA** on the 16th February 1994 be revoked and or annulled and the grant be issued to **MARY ODUOR MBUGA**. When the matter came up for directions the court ordered that for proper determination of this cause parties would be required to adduce oral evidence which they proceeded to do. The applicant became the plaintiff and the respondent defendant.

In her testimony PW1, the applicant told the court that she got married to the deceased in 1971 and in the year 1972 he paid 16 heads of cattle as dowry. Previously the deceased was a widower. In their union they were blessed with 8 children namely:

1. **SALMON ONDIEKI MBUGA**
2. **MARIELLA AOKO MBUGA**
3. **MICHAEL ASUNGA**
4. **WALTER OTIENO**
5. **KENNEDY ODHIAMBO**
6. **MERESA ATIENO**
7. **GRACE AKINYI**
8. **JOSEPH ODERO**

The husband felt ill in 1987 and died. She said that the deceased had sub-divided land parcel No. **SUNA EAST/AREA 'B'/KWA/412** into two portions namely **EAST SUNA/AREA 'B' KWA/931** and **932**. He transferred No.932 to one **JOHN OKOTH MBUGA** who was from the first house. The remaining 931 remained in his name and was meant for her house (2nd house). In the first house it was the respondent and **JOHN OKOTH MBUGA** that were born. When cross-examined by the respondent he denied having left the matrimonial home to go and cohabit with one **WERE OBONYO**.

PW2 MESHACK RABONGO ILLA is the village elder at Kwa Sub-Location. He testified that he knew the deceased as he was his brother. He said the deceased's first wife died having given birth to 4 children who included the respondent. He further said that when the 16 heads of cattle were paid as

dowry he was present. He denied that the applicant was married to one **OBONYO**. He also confirmed that the deceased had sub-divided his land into two, each for his respective wives.

PW3 JAMES ADE ODONGO is the brother-in-law to the deceased. He confirmed that the deceased paid the heads of cattle as dowry. She denied that his sister was married to one **OBONYO**.

PW PHILIP OTIENO KISIAGOR is the chief Suna Rabuor Location. He testified that the deceased was married to **WANGA OTIATO** his first wife as well as the applicant. He said that the deceased divided his land into two. He produced the copies of mutation forms and other transfer documents.

He produced green cards to show the extent of the conveyancing exercise undertaken by deceased. He denied that the applicant was the only beneficiary in the estate.

The respondent on the other hand testified that indeed the applicant is her step-mother. He however said that the applicant left the matrimonial home and went to Nyakach and married one **WERE OGONDI** after the deceased died. He said that the applicant came back only after the death of the deceased. He admitted that the applicant had 4 children with the deceased namely:

1. **MICHAEL OSUGO**
2. **KENNEDY ODHIAMBO**
3. **WALTER OTIENO**
4. **GRACE AKINYI**.

That she came with **SALMON ONDIEKI** and **MERESA AOKO** when she married the deceased. From his testimony he confirms that the deceased sub-divided his land into two, one to **JOHN MBUGA** his other (the respondent) and out of Plot No.931 he got 1½ acres and the respondent got 3 acres.

DW 2 FRANCIS OWITI OKILO testified that he came from the same clan with the deceased. He confirmed that the deceased married the applicant in 1972 and by then she had 2 children. They got other children thereafter before she went away. She then went away but later came back, He said that the deceased sired 6 children with the deceased.

DW3 MICHAEL NDINYA said that the applicant is her sister-in-law. Her husband was one **JUSTO WERE** and they had 3 children with her., thereafter left after 9 years before leaving to Seme where she married someone else. He said that they were blessed with children namely **AOKO** and **NYABINDA**. She said that he had no problem with the applicant being given land wherever she was. His interest was only the two children.

Having heard the parties oral evidence together with their testimony, it is simply clear and equally admitted by the respondent that the applicant was married by the deceased way back in 1972. There is no dispute that the deceased paid 16 heads of cattle as dowry. It is not further in contention that they were blessed with children although it appears that the first two children did not belong to the deceased according to the respondent.

There is no evidence that the applicant went away and got married to one **WERE** or **OBONYO** . The respondent did not present any facts and neither did he deny the fact that the 6 children belonged to the deceased.

I therefore find that in terms of Section 29 of the Law of Succession Act the applicant is the legitimate wife to the deceased. All her witnesses testified to this fact including the respondent and his witnesses. There was no apparent reason therefore of locking her out of the succession proceedings.

In light of the above findings I do allow the chamber summons as follows:

- a. **The grant of letters of administration issued on 1st August 1991 to RAPHAEL JUMA MBUGA and confirmed on 6th February 1992 is hereby set aside;**

- b. All consequential orders arising therein including the registration of RAPHAEL JUMA MBUGA as the proprietor of land parcel No. SUNA EAST 'B' KWA/931 is hereby set aside and the Land Registrar is directed to rectify the said register so as to revert to MARIKO MBUGA OUKO – deceased forthwith
- c. Letters of administration are hereby issued to MARY ODUOR MBUGA and RAPHAEL JUMA MBUGA in respect to the estate;
- d. Parties be at liberty to apply;
- e. costs in the cause.

Dated, signed and delivered this 30th day of October 2015.

H. K. CHEMITEI

J U D G E