



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

SUCCESSION CAUSE NO.408 OF 2013

IN THE MATTER OF THE ESTATE OF ANDERICUS OBONGO NYARIANYA -DECEASED

AND

RISPER A. OMOLLO

JANE A. INDIA.....APPLICANTS/INTERESTED PARTIES

RAPHAEL A. OSURO

VERSUS

PATRICK NYARIANYA.....PETITIONER/RESPONDENT

R U L I N G

1. There are 3 sets of applications filed by the parties herein. The first one is the amended chamber summons dated 2.7.2013 in which **RISPER ALICE AMOLO OMOLLO** among other prayers is asking that the respondent **PATRICK NYARIANYA** be restrained from dealing with land parcel number **KISUMU/KOLUNJE/868**. The said applicant is equally praying that the grant of letters of administration issued on 13/9/12 and confirmed on 11.1.13 vide Maseno Succession Cause No.12/12 be annulled and set or set aside.
2. The other applicant **JANE ACHIENG INDIA** made a similar application jointly with **RAPHAEL AKELO OSURO** dated 14.10.15. The substance of their application is that they are beneficiaries of the estate by virtue of being beneficiaries having purchased the suit parcel of land.
3. Further that the whole issue was litigated upon by court vide the land dispute tribunal and its finding adopted in land case No.7/12 at Kisumu Chief Magistrate's Court. The respondent's appeal to the Appeal Board according to the applicants was not successful.
4. While the application was pending the respondent on 19/5/15 filed an application dated even date seeking to injunct the applicants herein from dealing with the suit property. According to him the applicants were trespassers and inter-meddlers to the estate.
5. When this matters came up for hearing the court reserved its direction so as to peruse the said application. From the gleaning of the facts herein it is clear that the genesis of the problem between the parties dates back to the days of the dispute at the Land Tribunal, a fact well known by the applicant. Fundamentally though is whether the respondent's letters of administration which he filed at Maseno

Magistrate's Court and later confirmed were valid for purposes of the Succession Act.

6. The magistrate's Court as per the Succession Act can only determine estates which its monetary value does not exceed Kshs.100,000/=. Section 49(1) of the said Act states as follows:

“Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under Section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings:

Provided that for the purpose of this section in any place where both the High Court and a resident magistrate's court are available, the High Court shall have exclusive jurisdiction to make all grounds of representation and determine all disputes under the Act.”

7. The size of the land parcel **KISUMU/KOLUNJE/868** measures 6.6 hectares. The court takes judicial notice that the value is way above Kshs.100,00/= envisaged by the Act. Consequently even without determining whether the applicants are entitled to the estate of the deceased it is clear that the magistrate's court at Maseno did not have the monetary jurisdiction and by extension territorial jurisdiction to entertain the succession cause. The High Court at Kisumu is within the geographical as well as administrative jurisdiction of the said Maseno Court.

8. In the premises, I am left with no other option but to make the following orders:

1. **The grant issued on 13.6.14 and confirmed on 11.2.13 at Maseno Magistrate's Court is hereby annulled forthwith.**

2. **All the consequential orders arising therefrom including the transfer of the suit parcel of land to the respondent PATRICK NYARIANYA on 19.2.13 is hereby cancelled and the land registrar is hereby ordered to amend the register accordingly so as to have the suit land revert to the late ANDERICUS OBONGO NYARIANYA.**

3. **The succession file No.12/12 at Maseno Principal Magistrate's Court is hereby transferred to Kisumu High Court for hearing and final determination.**

4. **Upon prayer (3) above being implemented a fresh grant shall issue to PATRICK NYARIANYA ODUNGA, the respondent herein.**

5. **Let there be a status quo on the ground, namely that each party to continue utilizing the suit parcel of land as at the date of the delivery of this ruling.**

6. **The applicants upon prayer (3) above being complied shall be at liberty to file their respective claims.**

7. **Each party shall meet their respective costs.**

Dated, signed and delivered this 29th October, 2015

H. K. CHEMITEI

J U D G E