



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO. 411 OF 2011

IN THE MATTER OF THE ESTATE OF BENJAMIN OKUMU ODUKI (DECEASED)

BETWEEN

JOSEPH NYERERE OKUMU.....PETITIONER

VERSUS

JOSEPH PETER ODUKU.....OBJECTOR

DIRECTIONS

1. These proceedings are in respect to the Estate of Benjamin Okumu Oduki (The Deceased) who died on 29th January 1990. A contest which pits Joseph Nyerere Okumu (The Petitioner) against Joseph Peter Oduki (The Objector) has arisen.

2. After hearing oral evidence of the Contestants and their witnesses, I reserved my decision for 11th November 2015. Upon an evaluation of the Evidence it became evident that the Deceased was survived by the following blood children:-

- i. Peter Odongo Okumu
- ii. Joseph Nyerere Okumu (the Petitioner)
- iii. Edwin Wafula Okumu
- iv. Elizabeth Anyango

Whether or not the Objector was taken in as a child or otherwise a Dependent of the Deceased in terms of Section 29 of Law of Succession Act is a matter to be determined by this Court. Edwin Wafula Okumu and Elizabeth Anyango never participated in these proceedings while Peter Odongo Okumu is said to have died on 23rd November 1993. The son of the late Peter by the name Stephen Juma Okumu swore a witness affidavit on 12th March 2014 as a witness for the Objector.

3. My determination of the contest between the Petitioner and the Objector may well be a determination on the Distribution of the entire Estate. This Court cannot meaningfully determine the matter unless the other children of the Deceased renounce their claims, if any, or have their say in Court. This Court heeds the words of the Court of Appeal in Christine Wangari Gachigi vs Elizabeth Wanjiru Evans & 11 others (2014) eKLR when it stated,

1. **Under Section 38 of the Act; all that one needed to establish in this cause was to show that they were either children or grandchildren of the deceased. Matters of failure to participate actively in the litigation proceedings should not have been a disintitling consideration in**

respect of the 2nd 3rd and 4th cross appellants, in the absence of their renunciation of respective claims to the estate.

4. This Court therefore directs that the Petitioner serves all the surviving children of the Deceased and the Administrator of the Estate of Peter Odongo Okumu (or if no administrator has been appointed, his surviving children) to attend before me on a date I shall presently appoint.

5. Those are my directions.

Dated, signed and delivered at Busia this 11th day of November 2015

F. TUIYOTT

J U D G E

In the presence of

Oile – C/Assistant

Petitioner Present in person

Objector present in person