



REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION NO. 6 OF 2014
IN THE MATTER OF THE ESTATE OF
ESTHER ADOYO ONUONGA (DECEASED)

BETWEEN

VINCENT ONYANGO OGAL

VICTOR OKOTH OGALAPPLICANTS

AND

SAMSON ONUONGA OGALADMINISTRATOR

RULING

1. By a ruling dated 10th April 2014, Maina J., dismissed the summons for revocation of or annulment of grant dated 30th January 2014. The application had been filed by Vincent Onyango Ogal and Victor Okoth Ogal who are the sons of Samson Ogal Onuonga. Samson Ogal Onuonga was the only son of the deceased, Esther Adoyo Onuonga who died on 10th October 2010.

2. Samson Ogal Onuonga had lodged proceedings in Oyugis being ***Succession Cause No. 59 of 2011*** to administer the estate of his mother. A grant was issued on 11th April 2013 and the same confirmed on 24th April 2013. According to the certificate of confirmation of grant, the property of the deceased was distributed to Samson Ogal Onuonga (4.64Ha), Kenneth Odiwuor Ogal (0.93Ha) and Victor Okoth Ogal (0.93Ha). Kenneth and Victor are the sons of Samson. This distribution is what led to the other children of the Samson Ogal to file the application for revocation as they felt that they had been excluded as beneficiaries of the deceased's estate.

3. Maina J., addressed herself to the provisions of **section 76 of the Law of Succession Act (Chapter 60 of the Laws of Kenya)** and held that there was no defect in the proceedings that led to the grant. She also found that no case had been made by the applicants that there had been for material non-disclosure. She also held that the Oyugis Court had jurisdiction to deal with the matter.

4. In dismissing the application, the learned judge observed that, *"I note however that the respondent has conceded that he needs to rethink the distribution of the estate which is what this application is about. Accordingly this court shall give parties 21 days to agree on an equitable made of distribution."*

5. The direction for re-distribution is what has precipitated the proceedings before me because as the parties proposed re-distribution, it became apparent that a third party, Salleh Odumbe Ogada, had acquired an interest in the properties by way of purchase from some of the beneficiaries. Saleh vehemently opposed any re-distribution as he had acquired his interest based on valid agreements of sale after the grant had been confirmed.

6. Kenneth Odiwuor Ogal, on his part, deponed that Salleh Ogada had never purchased land from him and if he did, there was a failure of consideration as he was not paid the full consideration. He also accused Salleh of deliberately inflating the area of his land. He was supported in this contention by Samson Ogal Onuonga who filed a further affidavit. Victor Okoth also testified how five of the seven siblings of Samson Ogal Onuonga have been disinherited.

7. I must state very clearly that as the application for revocation and annulment was dismissed by Maina J., I cannot sit on appeal over it or review it. My role is to determine as directed whether the property can be re-distributed. In so doing it is clear that by confirming the grant, the estate was administered and nothing remains for administration. To set aside the confirmed grant would be to annul the grant which my sister has held to be valid.

8. I also must bear in mind that the interests of third parties must be protected and that it why I framed the issue for consideration whether Saleh Odumbe Ogada had purchased a portion of **CENTRAL KASIPUL/KACHIEN/500** and whether he was a bonafide purchaser value and accordingly the registered owner of **CENTRAL KASIPUL/KACHIEN/1792 AND 1805**. From the testimony and evidence I have taken from both sides, it is clear that Saleh Odumbe Ogada has acquired part of the property and has been issued with title deeds. The issue as I understand is whether the property was obtained lawfully or by fraud. This is not a matter to be dealt with by the court exercising jurisdiction under the **Law of Succession Act**. It is now a land dispute between the proprietors who acquired the land after the grant was confirmed and the purchaser and it must now be dealt with by the Land and Environment Court hence the issue framed must be decided elsewhere.

9. It is for the aforesaid reason that I have avoided commenting on or expressing any view on the legality of any transactions between the Salleh Odumbe Ogada and members of Samson Ogal Onuonga's family.

10. Whereas I am sympathetic to the applicant's case, as far as I am concerned, the succession matter was completed once the estate of the deceased was administered by confirmation of the grant on 24th April 2013. As Maina J., declined to annul or revoke it, my hands are tied.

11. Consequently I decline to order redistribution of the estate of the deceased.

DATED and DELIVERED at HOMA BAY this 16th day of December 2014

D.S. MAJANJA

JUDGE