



**REPUBLIC OF KENYA**

**High Court at Kisii**

**Civil Miscellaneous Application 21 of 2012**

**MARK ODHOCH OYIEKE ..... APPLICANT**

**VERSUS**

**JAMES AOKO OYIEKE ..... RESPONDENT**

**JUDGMENT**

1. Before me is the summons dated 31<sup>st</sup> January 2012 and filed in court on 1<sup>st</sup> February 2012. The applicant, Mark Odhoch Oyieke, seeks orders that:-

1. *The instant Application be certified urgent and same be heard Ex-parte in the first instance.*
2. *Pending the hearing and determination of summons herein, the Honourable Court be pleased to issue a prohibitory order of Injunction and/or conservatory order, restraining the respondents from disposing of, selling and/or appropriating the Assets of AGNES OGADA OYIEKE & MAGDALINA OPUDO OYIEKE, the Deceased herein, more particularly, LR NO. WEST KARACHUONYO/*

*KOYUGI/861, in any manner whatsoever and/or howsoever.*

3. *The Grant of Letters of administration granted to the Petitioner/*

*Respondent on the 28<sup>th</sup> December 2010, albeit signed on the 25<sup>th</sup> January 2011 vide OYUGIS PMCC SUCCESSION CAUSE NO.176 OF 2010, be Revoked and/or annulled.*

4. *The Register in respect of LR NO. WEST KARACHUONYO/*

*KOYUGI/861, be rectified and the name of the Respondent be rescinded and/or deleted therefrom and same do revert to the names of **AGNES OGADA OYIEKE & MAGDALINA OPUDO OYIEKE**, the Deceased persons herein.*

5. *The Respondent herein, do tender accounts in respect of the state of the Estate of **AGNES OGADA OYIEKE & MAGDALINA OPUDO OYIEKE**, the Deceased persons herein, more particularly, the obtaining extent of the Administration so far taken.*

6. *Costs of the Application be borne by the Respondent.*

7. *Such further and/or orders be made as this Honourable Court may deem fit and expedient.*

2. In support of the application, the applicant deponed that Agnes Ogada Oyieke (deceased) was his step mother and passed away on 4<sup>th</sup> November 2005 while on the other hand, Magdalena Opudo Oyieke (deceased), was his biological mother and she passed away on 3<sup>rd</sup> February 2001. That at the time of her death Magdalena Opudo Oyieke had 2 sons and 3 daughters who are alive and 3 sons who died after her while Agnes Ogada Oyieke (deceased) had one son (the respondent) and one daughter.

3. That consequently, the respondent took out letters of administration (intestate) vide Oyugis PMCC Succession Cause No.176 of 2010 purporting to have been the sole heir of the 2 deceased persons herein, that the said court was not seized of the requisite jurisdiction to handle/entertain the subject matter but however, the honourable court proceeded to grant Letters of Administration as sought on the 28<sup>th</sup> day of December 2010 in favour of the Respondent without jurisdiction.

4. He further deponed that the respondent has since caused parcel of land namely LR NO. WEST KARACHUONYO/KOYUGI/861 (**hereinafter referred to as the suit land**) to be transferred and registered in his name before confirmation of the Grant of the Letters of Administration and without the requisite consent of the heirs and/or beneficiaries of the Estate of the deceased.

5. In addition, the applicant/respondent avers that the petitioner is obliged to supply and/or disclose the true value of the Estate of the deceased, together with the extent of liabilities thereto which he did not do, that the succession proceedings in Oyugis PMCC Succession cause No.176 of 2010 touched on suit land whose total acreage is 1.5 acres and in the same area, 1 acre of land retails at Kshs.100,000/= meaning the suit land is valued at Kshs.150,000/= and therefore exceeds the pecuniary jurisdiction of the subordinate court.

6. He further deponed that the succession proceedings sought to be revoked concern the estates of two (2) Deceased persons, who died on different dates and are survived by different beneficiaries/heirs; that the said succession was therefore improper, irregular and bad in law, substantially defective, unlawful, illegal and as a consequence the Grant of Letters of Administration issued to the petitioner ought to be revoked.

7. The Respondent opposed the application vide his Replying Affidavit sworn on 22<sup>nd</sup> February 2012. Three paragraphs namely 11, 12 and 16 of the said affidavit stand out. The respondent avers as follows:-

**“11. That I hereby declare that I have no interest in taking or**

**inheriting the half share of the land belonging to Magdalena Opudo but to process the share which my mother had intended to transfer to me before she died and the succession proceedings filed in Succession Cause No.176 of 2010 was solely for the purpose since there was nobody from the household of Magdalena Opudo willing to apply for a grant of letters of administration.**

**12. That I have read the affidavit of Mark Odhoch Oyieke sworn on 31<sup>st</sup> January 2012 and admit the facts stated in paragraphs 2, 3, 4,5, 6 and 7 but avers that the failure to disclose all the names was not done with any ulterior motives but only because I was only concerned with my share of the estate.**

**16. That since there were procedural errors which occurred during the aforesaid succession cause I have no objection to the said grant being revoked wholly and thereafter the following orders be made, viz:-**

**a) A grant of letters of administration intestate of the estate of Magdalena Opudo Oyieke be issued to Mark Odhock Oyieke.**

**b) A grant of letters of administration intestate of the estate of Agnes Ogada Oyieke be issued to James Aoko Oyieke.**

**c) The title for Land Parcel No.W. Karachuonyo/ Koyugi/861 be rectified by deleting the name of James Aoko Oyieke and substituting in the place thereof the names of Magdalena Opudo Oyieke and Agnes Ogada Oyieke and thereafter the same be divided into two equal parts for the purpose of administration and transfer.”**

8. In essence what the Respondent has done is to concede the application and to ask the court to allow the application in terms of paragraph 16 of the Replying Affidavit. In the circumstances, and on the basis of the submissions filed herein on 4<sup>th</sup> May 2012 and 4<sup>th</sup> July 2012 by the applicant and respondent respectively, and considering the law, I allow the applicant’s application dated 31<sup>st</sup> January 2012 in terms of prayers 3, 4 and 5 thereof. The respondent shall comply with the order in respect of prayer 5 within sixty (60) days from the date of this judgment. Costs of the application shall be borne by the Respondent. Mention in 23<sup>rd</sup> July 2013 for further orders/directions.

9. It is so ordered.

**Dated and delivered at Kisii this 23rd day of May, 2013**

**RUTH NEKOYE SITATI**  
**JUDGE.**

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In the presence of:

Mr. Odhiambo Ochieng for Oguttu-Mboya for Applicant

Mr. Nyauke (absent) for Respondent  
Mr. Bibu - Court Clerk

***HC (KISII) MISC. APPLIC. NO.21 OF 2012***