



REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 380 of 2006

IN THE MATTER OF THE ESTATE OF EPHRAHIM GEORGE OGOLI (DECEASED)

GRACEIMALI JAHAVA APPLICANT

V E R S U S

ANTHONY AMAIDZA OGOLI RESPONDENT

R U L I N G

In the application dated 22nd of March 2012 the applicant is seeking the revocation of the letters of administration issued to the respondent and that the applicant be included as a joint administrator and beneficiary to the deceased's estate. The applicant is also seeking cancellation of the transfers affecting the deceased's estate that were effected after the grant was confirmed. The application is supported by her affidavit. Parties took directions and agreed to proceed by way of written submissions and both parties duly complied with that direction.

The applicant's contention is that she is currently the eldest child of the deceased but was not included in the list of beneficiaries of the deceased's estate. She lives in Canada and all her other brothers live outside the country except the respondent herein who is her younger brother. She would like to be made one of the administrators as well as inherit her late father's estate.

On the other hand the respondent does admit that the applicant is his sister but maintains that the deceased left a valid Will and the estate was distributed in accordance to that Will. The applicant raised the issue of inheritance during the commemoration ceremony of their late father but the family held that inheritance was to be done in accordance with the Will. According to the respondent the grant was confirmed and he would like the confirmed grant to be followed. However, should the court rule in the applicant's favour his prayer is that the estate be shared equally.

The brief history of this matter is that the late EPHRAHIM GEORGE ADOLI died on the 19th of May 2006. He was survived by the following nine children:-

1. GRACEIMALI JAHAVA - DAUGHTER
2. JAMES AHAI OGOLI - SON
3. AGGREY UJANGO OGOLI - SON

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| 4. | DAVID MWALE OGOLI | - | SON |
| 5. | ERICK AMBANI OGOLI | - | SON |
| 6. | FRANCIS MAJANI OGOLI | - | SON |
| 7. | MIKE LUGAYE OGOLI | - | SON |
| 8. | ANTHONY AMAIDZA OGOLI | - | SON |

The deceased left the following properties:-

1. L.R. NO. TRANSZOIA/CHEPCHOINA/TWIGA 366
2. L.R. NO. TRANSZOIA/CHEPCHOINA/TWIGA 367
3. L.R. NO. KAKAMEGA/KONGONI/269
4. L.R. NO. KAKAMEGA/CHEPTULU/590
5. DATSUN PICK UP REG. NO. KWA 271
6. TOYOTA CORROLA REG. NO. KAG 455 E
7. SHARES IN MUDETE TEA FACTORY
8. SHARES WITH KENYA COMMERCIAL BANK A/C NO. 000044411
9. GRADE CATTLE
10. MATURE TREES ON L.R. NO. KAKAMEGA/CHEPTULU/590

The respondent herein filed this succession cause and a grant of letters of administration was issued on the 10th of January 2007 and the same was subsequently confirmed on the 17th of February 2010. Unknown to the applicant, she filed Eldoret Succession Cause No.70 of 2007 and she was issued with a grant. The applicant filed application for the confirmation of that grant dated 16th December 2011 before the Eldoret Court but the respondent countered that by stating that a grant had been issued by this court and the same had been confirmed. That made the applicant to make an about-turn and make the current application before this court.

According to the confirmed grant issued by this court the deceased estate was to be shared as follows:-

JAMES AHAI OGOLI - TRANSNZOIA/CHEPCHOINA/TWIGA/366 - WHOLE

AGGREY UJANGO OGOLI - TRANSNZOIA/CHEPCHOINA/TWIGA/367 - WHOLE

DAVID MWALE OGOLI -

FRANCIS MAJANI OGOLI – KAKAMEGA/KONGONI/269 TO SHARE

MICHAEL LUGAVE OGOLI – EQUALLY

ERICK AMBANI OGOLI - KAKAMEGA/CHEPTULU/590 TO SHARE

ANTHONY AMAIDZA OGLI -

EQUALLY

ANTHONY AMAIDZA OGOLI - DATSUN PICK UP REG. NO. KWA 271

ANTHONY AMAIDZA OGOLI - SHARES WITH K.C.B. A/C NO.000044411

The main issue for determination in this matter is whether the applicant should benefit from the deceased's estate and whether indeed there was a Will left by the deceased and how the estate should be distributed. **Section 29A** of the Succession Act defines a dependant as follows:-

“29. For the purposes of this Part, “dependant” means –

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.”

It is not disputed that the applicant is the deceased's daughter. From the list of the deceased's children the first born daughter is since deceased and the applicant is the only surviving daughter. The respondent did not include her in the list of beneficiaries and notified all his other brothers who were living out of the country about the succession cause but left out the applicant. I do find that the applicant being the deceased's daughter is a dependant of the deceased and is entitled to benefit from the deceased's estate.

The next issue is whether the deceased left a Will. The respondent annexed a document dated 20th March 2004 addressed to all the deceased's sons and titled “**Gifts of family land inheritance**”. The document has the names of **EPHRAHIM GEORGE OGOLI** and he purportedly signed that document. There is no witness to that document. Under the provisions of **Section 10 (c)** of the Succession Act for a Will to be valid it has to be attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the Will. The document annexed by the respondent does not pass that test as there is no witness to it. It is not also clear whether the deceased signed it. Apart from the above, the respondent himself when he filed the current succession cause didn't indicate in the respective forms that the deceased died intestate. That proves that there was no Will. I therefore find that the deceased died testate and the purported Will cannot be the basis for the distribution of the deceased's estate.

The last issue is how the estate should be distributed. The applicant is seeking to be given plot no. **KAKAMEGA/KONGONI/269** only and she would like the rest of the estate given to her brothers. From the evidence on record that plot is about 11.3 hectares and is the biggest amongst the deceased's plots. On his part the respondent proposes that the estate be divided equally. **Section 38** of the Succession Act provides as follows:-

“38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

From the above provision it is clear that each child of the deceased is entitled to an equal share of the estate. Since parties are not in agreement on how the estate should be distributed, I do order that the estate be shared equally amongst all the deceased's children. In view of this finding I do direct that the applicant's name be included in all the deceased's properties. I further direct that the respondent herein does file a statement of account within 90 days hereof in relation to the status of the other properties namely:-

1. Datsun Pick Up – Registration No. KWA 271
2. Shares with Kenya Commercial Bank A/C No. 000044411
3. Shares in Mudete Tea Factory
4. Fifteen high grade cattle

5. Mature trees on L.R. No. KAKAMEGA/CHEPTULU/590

In the end, the application dated 23rd March 2012 is granted in the above terms. The confirmed grant issued to the respondent by this court on 17th February 2010 is hereby revoked. The deceased's estate shall be shared equally amongst his children. I note that the first daughter – Dr. Joy Kadenyeka Opena is since deceased. According to the respondent, one **SAMMY OGADO OPANA** is the son of the deceased daughter and he resides in the USA. I do order that her share shall be taken by her son who shall hold in trust for his own benefit and for the benefit of his brothers and sisters, if any. The respondent to surrender all the title deeds for plot numbers **TRANSNZOIA/CHEPCHOINA/TWIGA 366 and 367, KAKAMEGA/KONGONI/269 and KAKAMEGA/CHEPTULU/590**. New title deeds to be issued in the names of all the dependents herein. A fresh confirmed grant to be issued in the names of both the applicant and the respondent who shall be joint administrators. The rest of the estate shall be shared after the respondent files the statement of account. Each party to meet his/her own costs.

Delivered, dated and signed at Kakamega this 11th day of October 2012.

SAID J. CHITEMBWE

J U D G E