



REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 19 of 1992

IN THE MATTER OF THE ESTATE OF JAPHETH ALIONG'O KHATILI - (DECEASED)

BETWEEN

HENRY KHATILI OKUSIAPPLICANT

A N D

1. EMILY ATISA ALIONG'O 1ST RESPONDENT

2. READON AKHAHUKWA INDIMULI 2ND RESPONDENT

R U L I N G

The application by way of Chamber Summons dated 27.2.12 seeks the following orders:-

“1. Spent.

2. That the Honourable court be pleased to substitute the applicant, one HENRY KHATILI OKUSI in place of the Petitioner who has since passed on.

3. That upon the said substitution, the Honourable court do issue the applicant with a grant of letters of Administration intestate so as to enable him continue with the administration of the deceased's estate.

4. That the Honourable court be pleased to order the District Land Registrar Vihiga to cancel the registration of land parcel No. **West Bunyore/Emusire/1391** into the names **EMMY ATISA ALIONG'O** on 26th January 2011 and its subsequent registration into the names of one READON AKHAHUKWA INDIMULI.

5. That upon the grant of orders in 5 above the Honourable court be pleased to order the reinstatement of the deceased's names ALIONGO KHATILI as proprietor of land parcel No. **West Bunyore/Emusir/1391**.

6. That the respondent be jointly restrained whether acting by themselves, their agents, servants, employees and/or in any manner whatsoever from entering, cultivating, developing, sub-dividing, selling or in any other manner from dealing with land known as **West Bunyore/Emusire/1391**.

7. That the respondent be condemned to pay costs of this application.”

The application is supported by the affidavit of the applicant, HENRY KHATILI OKUSI sworn on 27.2.12.

The applicant has described the deceased herein as his brother. He has averred that the petitioner was the widow to the deceased and the 1st respondent is a daughter to the said petitioner but not a daughter to the deceased. The applicant accuses the 1st respondent of causing the deceased's L.P. No. **West Bunyore/Emusire/1391** to be registered in her name then transferred the same to the 2nd respondent. The applicant claims to be entitled to a share of the estate of the deceased.

The application is opposed to as per the affidavit sworn by the 1st respondent, **EMMY ATISA ALIONG'O** on 29.3.12. The position by the 1st respondent is that the deceased was her biological father and that her mother, the late **ROSELAN NYANGASI ALIONGO** petitioned the court for grant of letters of Administration and procedurally proceeded to acquire title to the land in question. The 1st respondent has further averred that she obtained a grant of letters of administration in the estate of her late mother and proceeded to acquire title to the L.P. No. **West Bunyore/Emusire/1391** in question. According to the 1st respondent, the applicant is a nephew to the late **JAPHETH ALIONG'O KHATILI** (Deceased) and therefore the 1st respondent as a daughter to both her father and mother ranks in priority to petition the court for grant of letters of administration. The 1st respondent has further contended that the applicant inherited land from his own father.

The 2nd respondent, **READON AKHAHUKWA INDIMULI** filed a replying affidavit sworn on 24.9.12. The said affidavit states that he bought the whole of the parcel of land the subject matter of these proceedings from the 1st respondent.

Mr. Chitwah advocate appeared for the applicant while the firm of Mukavale advocates appeared for the respondents.

I have considered the proceedings herein and the submissions made by the counsels.

The record clearly shows that letters of grant of administration in the estate of the deceased, **JAFETH ALIONGO KHATILI** were issued on 15.5.92. According to the record, the said grant remained unconfirmed.

The record shows that the only other activity that seems to have taken place in this petition was the filing of the instant application. It is therefore an anathema how another grant of letters of Administration was issued on 13.12.05 in the estate of **ROSELAN NYANGASI AGANGO** to **EMMILY ATISA ALIONGO**. To complicate matters further, the grant dated 13.12.05 was confirmed on 16.10.2009 but the said certificate of confirmation of grant is headed "**In the matter of the estate of AKETCH OBIERO**".

This connotes either grave errors on the record or an abuse of court process by fraudulent means.

From the affidavit evidence by both parties, it is not possible for the court to tell at this juncture who is a daughter, a brother or a nephew. Those are issues that can be dealt with by way of evidence.

What has come out clearly is that there was a misrepresentation of facts when the court was petitioned for issuance of grant of letters of Administration. It has come out that the deceased possibly had five daughters. None was disclosed. It is not clear if there were any other survivors, beneficiaries or dependants.

Consequently, the application is allowed on the following terms:

(a) The deceased petitioner (**ROSELAN NYANGASI AGANGO**) is hereby substituted by 1st respondent, **EMMILY ATISA ALIONGO** and the applicant **HENRY KHATILI OKUSI**.

(b) That the District Land Registrar Vihiga do cancel the registration of land parcel No. **West Bunyore/Emusire/1391** in the names **EMMY ATISA ALIONGO** on 26th January 2011 and its subsequent

registration into the names of one READON AKHAHUKWA INDIMULI.

(c) That the deceased's names ALIONGO KHATILI be reinstated as proprietor of land parcel No. **West Bunyore/Emusir/1391**.

(d) Pending the hearing and determination of this Succession Cause, each party to maintain the status quo that was obtaining as at the date of filing this application.

(e) Costs in the cause.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

B. THURANIRA JADEN

J U D G E