



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**SUCCESSION CAUSE NO. 130 OF 2011**

**IN THE MATTER OF ESTATE OF: JACOB OLUOCH OCHOMO**  
**.....DECEASED**

**AND**

**IN THE MATTER OF AN APPLICATION BY: WABANO OJANJA OLUOCH .....**  
**APPLICANT**

**VERSUS**

**MICHAEL ODONGO OKOLLA .....OBJECTOR**

**JUDGMENT**

The Applicant's application is dated 2<sup>nd</sup> March 2011 brought under the relevant Provisions of the Succession Act Chapter 160 Laws of Kenya and praying for the following orders:-

- (i) That this matter be certified as urgent.**
- (ii) That pending the issuance of any orders, the court grants orders restraining the respondent here from evicting, threatening or any way dealing with the parcel of land known as UHOLO /RAMBULA / 74.**
- (iii) That this court directs that the file in Succession number 53 of 2007 which was before the Principal Magistrate in Siaya be transferred to this court for trial and disposal.**
- (iv) That having transferred the said court file this court revokes the grant of Letters of Administration made on 10<sup>th</sup> September 2007 and confirmed on the 31<sup>st</sup> July 2008**
- (v) Costs to the applicant.**

The applicant acting in person supported his application by his affidavit sworn on 2<sup>nd</sup> March 2011. When this matter come up for hearing on 14<sup>th</sup> October 2011, I was satisfied that vide an affidavit of service dated 14<sup>th</sup> July 2011 the respondent was duly served.

The brief history of this matter is that the deceased passed away on 15<sup>th</sup> May 1974 as per the lower courts pleadings attached to the applicant's affidavit. According to the Chief's letter dated 6<sup>th</sup> July 2007 the deceased left the following dependants

**1<sup>st</sup> son** – the late Ojanja Oluoch who had one wife and three sons namely:-

- (i) Gertrude Wamban Ojanja - Widow**
- (ii) Gabriel Onyango Ojanja - Son**

- (iii) Anton Ongamo Ojanja - Son
- (iv) Oluoch Ojanja Ojanja - Son

**2<sup>nd</sup> son:** Okola Oluoch had two (2) wives and four sons namely:-

- (i) Sisia Onyango Okola - Widow
- (ii) Michael Odongo Okola - Son
- (iii) Alex Ouma Okola - Son

#### **Okola's 2<sup>nd</sup> Widow**

- (i) Benta Auma Okola - Widow
- (ii) Peter Oduor Okola - Son
- (iii) Fredrick Otieno Okola - Son

**3<sup>rd</sup> son:** Anyango Oluoch - no wife no child.

There is also a relative one **Waretta Sewe** who has since passed away and left behind a son by the name **William Waretta**. I have purposely set down the above chronology of the deceased dependants on the strength of the Area Chief letter (West Uholo Location – Ugunja Division).

From the pleadings from the lower court namely Succession Case No. 53 of 2007 Siaya Principal Magistrate Court form No. 5 – the Affidavit in support of petition for Letters of Administration Intestate the following are listed as beneficiaries

- (1) Wabana Ojanja Oluoch alias Gertrude Wamban Ojanja – daughter in law**
- (2) Sisia Onyango Okola – Daughter in law**
- (3) Benta Auma Okola – Daughter in law**

The deceased property is **UHOLO / RAMBULA / 74**.

In the confirmed grant issued on 31<sup>st</sup> July 2008, the Respondent locked out the rest of the beneficiaries who included the applicant herein. At least she should have included those mentioned above according to the Chief's letter I have extensively quoted. For purposes of ascertaining the dependants I shall refer to Section 29 of the Succession Act Chapter 160 Laws of Kenya in particular 29 (a) which states:-

**“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 mentioned by the deceased immediately prior to his death;**
- (b) Such of the deceased parents step parents, grand parents, grand children, step children, children whom the deceased had take into his family as his own, brothers and sisters and half brothers and half sisters were being mentioned by the deceased immediately prior to his death.....”**

The parties therefore mentioned above have the right in the estate of the deceased.

There is no evidence that the respondent took any steps to notify them or at all. By virtue of the provisions of Section 29 of Cap 160 quoted above the applicant being the grandson to the deceased has the liberty to apply for his share of the estate.

For the following reasons I do therefore allow the applicant's application and make the following orders:-

**(i) The grant of Letters of Administration issued to the respondent on 10<sup>th</sup> September 2007 and confirmed on 31<sup>st</sup> July 2008 together with all the consequential proceedings in the Succession Case No. 53 of 2007 at Siaya Principal Magistrate Court is hereby revoked and or annulled.**

**(ii) Costs be in the cause**

Orders accordingly.

**Dated, signed and delivered at Kisumu this 26<sup>th</sup> day of October, 2011.**

**H. K. CHEMITEI  
JUDGE**

*HKC/aao*