



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 64 of 2001**

PAMELA AKINYI AWUOR

GEORGE ODERO (*Suing as the Joint Administrators*

of the Estate of the Late Charles John Odinga)**PLAINTIFF**

VERSUS

BARCLAYS BANK LTD **1ST DEFENDANT**

BONIFACE AWUOR **2ND DEFENDANT**

MOSES AWUOR **3RD DEFENDANT**

RULING

(1) This Notice of Motion was taken out by Boniface Awuor and Moses Awuor (**the second and third Defendants**) on the 13th July, 2007. They asked for the following orders:-

a) **That pending the determination of this suit, rent accruing from the piece of land known as Plot L.R. No.209/6989/67 “the suit premises” be paid into court or paid into a joint account in the names of the Plaintiffs and the Defendants; or**

b) **That a Receiver be appointed to receive the rent and manage the suit premises.**

(2) The grounds upon which the application is brought are that the Plaintiffs have exclusively managed the suit premises, yet the dispute over its ownership has not been determined or resolved; that the Plaintiffs have exclusively received the rent; and that in the event the Defendants succeed, it is unlikely they will be able to recover the moneys received by the Plaintiffs as rent.

(3) The supporting affidavit dated and filed on the 13th July, 2007 was sworn by Boniface Awuor the second Defendant. In paragraphs 2 and 3 of his affidavit, he depones –

“(2) **That I and my co-defendant are also personal**

representatives of the estate of Monica Akinyi Odinga (deceased) and beneficiaries in her will.

(3) **That these proceedings arose from a dispute**

between us (the second and third Defendants) and the Plaintiffs the main issue being who should eventually own the suit property being Plot L.R. No.209/6989/67.” [Emphasis Added].

(4) The application is opposed on the grounds stated in the affidavit of Victor Otieno Nyadimo sworn on the 17th July, 2007 and filed in court on the 18th July, 2007.

In paragraph 2 he deponed that he is co-administrator of the estate of his late father John Charles Odinga under a grant dated the 27th February, 2007. In paragraph 4, he depones that he and his other siblings, Belinda Agatha Achieng’ and Brian Joseph Awuor are the biological children of the late John Charles Odinga and Pamela Akinyi Awuor (both deceased).

(5) Victor Nyadimo also says that he is a student at Strathmore College of Accountancy while his sister Belinda Agatha Achieng’ is a student at Kibondeni College of Catering and Brian Joseph Awuor is a student at Barding Secondary School in Alego, Siaya District. Apparently, the three of them live in the servants’ quarters and the main house on the suit premises is let out. The rental income is applied to pay their fees at the various educational institutions and their upkeep. These three are orphans having lost both parents.

(6) Monica Akinyi Odinga made a Will on the 19th March, 1998 under the terms of which she bequeathed her personal and household effects to Charles Oloo Odinga, her husband. She gave the residue of her estate to her mother and her two brothers Moses Awuor and Boniface Otieno. (the Defendants).

(7) The suit property was registered in the joint names of John Charles Odinga and Monica Akinyi Odinga as Joint Tenants. Monica Akinyi Odinga predeceased her husband John Charles Odinga. At the date of writing her Will on the 19th March, 1998, she was well aware of her interest in the suit property. There is no reference to it in her Will. She must have undertaken and appreciated the legal effort of her joint tenancy between her and her husband. Moses Owuor and Boniface Otieno can in law only take specific bequests given to them by their sister Monica Akinyi Odinga under her Will. It takes quite a bit of ingenuity to turn a whole house into a residue of a deceased’s estate.

(8) The Complaint filed on the 18th January, 2001 contains the following, among other averments:-

“(4) At all material times to this suit, all that

property known as LR. No.209/6989/67 House No.K21C situate in Jamhuri estate within the City of Nairobi was jointly registered in the names of both Charles John Odinga and Monica Akinyi Odinga (both now deceased) who were at all material times husband and wife and who held the same as JOINT TENANTS.”

(5) The said Charles John Odinga was at all material times married to MONICA AKINYI ODINGA and PAMEALA AKINYI AWUOR under the Luo Customary Law. Monica Akinyi Odinga died on 9th April, 1998 while John Charles Odinga died on 15th December, 1998, some 8 months later and were survived by Pamela Akinyi Awuor the deceased’s second wife.”

(9) In the Defence and Counter claim filed by the Second and Third Defendants on the 21st February, 2001, they seem to dispute the date of death of Charles John Odinga. And in paragraph 3 they state –

“These defendants deny that the said Monica Akinyi Odinga and the said Charles John Odinga were married under the Luo customary law or at all as alleged and make no admission that Pamela Akinyi Awuor was the second wife of the said Charles John Odinga.”

(10) It would appear from the material on the court record that the marriage between Charles John Odinga and Monica Akinyi Odinga yielded no children. The three children Charles John Odinga left behind (namely Victor Nyadimo Belinda Achieng’ and Brian Awuor), were born by Pamela Akinyi

Odinga, his second wife. These three children are the persons currently in occupation of the suit property, a part of which they have rented out to raise money for their education and upkeep. The court, on this application, is asked to put the rent beyond the reach of these children and deny them education and sustenance. No court of justice can do that. And I am not prepared to do that.

(11) The Notice of Motion filed on the 13th July, 2007 accordingly fails and it is ordered that it be and is hereby dismissed with costs to be paid by the second and third Defendants.

Dated and delivered at Nairobi this 25th day of April, 2008.

P. Kihara Kariuki

JUDGE