



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU

Succession Cause 817 of 2000

IN THE MATTER OF ESTATE OF: ROSE AUKO OGWANG DECEASED

AND

**IN THE MATTER OF APPLICATION BY: TOBIAS AWINO OGWANG.....
APPLICANT**

RULING

There are two Estates involved in this matter viz the Estate of the late Veronica Auma Ogwang vide succession cause number 808 of 2000 and that of the late Rose Auko Ogwang vide succession cause number 817 of 2000. The deceased were sisters. They died unmarried and had no children. They were survived by their mother, a brother and sister as well as nieces.

In terms of assets, the late Veronica held a bank account with the Barclays Bank of Kenya Kisumu Branch with a balance at the time of approximately Kshs. 576,000/=

The late Rose was the registered proprietor of land parcel No. Kisumu/Nyalenda 'A"/579.

The deceased's brother Tobias Owino Ogwang petitioned for the grant of letters of administration in respect of the material estates and their sister Benter Adhiambo Ogwang raised objections.

However, on the 3rd July 2001, the two recorded a consent in the following terms:-

(i) The following be accepted as beneficiaries to the estates:-

- (a) Benter Adhiambo Ogwang**
- (b) Jane Atieno**
- (c) Regina Akinyi**
- (d) Mary Atieno**
- (e) Tobias Owino Ogwang**
- (f) Regina Ogutu Ogwang**

(ii) The Estate own,

(a) In HCCSUC No. 808 of 2000

- Kshs. 576,000/= in Barclays Bank Kisumu

- Some herd of cattle

(b) In HCCSUCC 817 of 2000

(i) land Parcel No. Kisumu / Nyalenda "A"/579

By a further consent made on 11th October 2001, the parties agreed as follows:-

(i) The sum of Kshs. 576,000 in Barclays Bank Kisumu Branch be distributed as follows:-

(a) Kshs. 250,000/= be given to Regina Ogutu Ogwang

(b) Kshs. 76,000/= be given to Benter Adhiambo Ogwang for day to day upkeep of the minor beneficiaries

(c) The balance of the sum after deductions in (a) and (b) above be held in the bank in the joint account in the names of Tobias Owino Ogwang, Benta Adhiambo Ogwang and Deputy Registrar, Kisumu law Courts

(ii) The Estates of the deceased Veronica Auma Ogwang and Rose Auko Ogwang be administered jointly by Tobias Owino Ogwang and Benta Adhiambo Ogwang

(iii) Cost be in the cause

This later consent order specifically and conclusively appointed Tobias Owino Ogwang and Benta Adhiambo Ogwang, the disputants herein, the administrators of the two Estates. The order set in place a scheme of distribution of the money held in the bank. Consequently, part thereof was distributed to Regina Ogutu Ogwang and Benta Adhiambo Ogwang.

The balance was to remain in the bank in the joint names of the two administrators and the Deputy Registrar of this court specifically for the benefit of the minor beneficiaries of the Estates. The order was silent with regard to land Parcel No. Kisumu/Nyalenda "A"/579.

The minor beneficiaries of the Estate were identified in the consent order of the 3rd July 2001 and included:-

(a) Jane Atieno

(b) Regina Akinyi

(c) Mary Atieno

The evidence adduced herein by the disputants shows that the said beneficiaries are the children of a deceased sister (Cornelia Akoth) of the two deceased (Veronica and Rose). It has further been shown that Jane has since married while Regina and Mary are still in school. **Jane may no longer be considered a beneficiary due to her new marital status.**

Despite the existence of the two most important consent orders, the first joint administrator of the Estates (i.e. Tobias) made an application on the 2nd March 2006 to have the consent order of the

11th October 2001 set aside. The application was heard and dismissed by the Hon. Lady Justice M. G. Mugo on the 14th May 2007.

A subsequent application dated 6th February 2007 was again made by Tobias. It sought orders to authorize the withdrawal of Kshs. 28,200/= from the account held with the Barclays Bank Kisumu Branch.

In dismissing the application Lady Justice Mugo remarked:-

“Piecemeal orders are clearly not beneficial to either of the disputants herein and the beneficiaries to the estate.

Diligence and prudence would require that the parties to this unresolved dispute proceed to have the same resolved once and for all by setting the same down for a full and conclusive hearing without delay before the assets of the estate become depleted by some beneficiaries at the expense of others”.

The indication given by the joint administration / disputants herein is that they are quarrelling over the money in the bank forgetting that the issue pertaining thereto was resolved by the consent order of the 11th October 2001.

There is no short cut to the order. The balance of the money in the bank is to be applied for the benefit of the beneficiaries Jane, Regina and Mary. Jane may no longer benefit due to her new married status. However, Regina and Mary must continue benefiting from the remainder of the money which should specifically be applied towards the payment of their school fees and other related educational expenses.

Since the aforementioned consent order did not make any provisions regarding the land Parcel No. Kisumu /Nyalenda “A”/579, it is only fair that the same be applied for the benefit of the remainder of the beneficiaries who would be the joint administrators / disputants themselves.

The second joint administrator Benta Adhiambo has already benefited from the distribution of the money in the bank. Her interest in the parcel of land is minimal if not non-existent. She proposes that the land be distributed to the children of her deceased sister Plister Ayodo i.e. Jeremiah Odhiambo, Alex Omondi and George Olilo.

The proposal is however untenable for the basic reason that the said children were not identified as beneficiaries in the consent order made on 3rd July 2001. They are therefore intruders and busybodies and are not entitled to benefit whatsoever from the distribution of the two Estates.

Consequently, this court would exercise the powers conferred upon it by Section 73 of the Probate & Administration Rules and order that the material parcel of land be distributed exclusively to the first joint administrator Tobias Owino Ogwang.

Further, there shall be an order that the money in the bank be applied as stated hereinabove but shall be held in the same account with the Barclays Bank of Kenya Kisumu Branch in the joint names of the second joint administrator Benta Adhiambo and the Deputy Registrar of this Court. The first joint administrator Tobias Owino shall from this date hereof have nothing to do whatsoever with the material bank account.

Those are the orders.

Dated, signed and delivered at Kisumu this 5th day of December 2008.

J. R. KARANJA

JUDGE

JRK/aao