



REPUBLIC OF KENYA



In re Estate of John Odongo Abadha (Deceased) (Succession Cause 1179 of 2013) [2024] KEHC 1183 (KLR) (13 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 1179 OF 2013
RE ABURILI, J
FEBRUARY 13, 2024**

IN THE MATTER OF THE ESTATE OF JOHN ODONGO ABADHA (DECEASED)

IN THE MATTER OF

**NELSON ODONGO 1ST APPLICANT
KEPHER ODONGO 2ND APPLICANT
SAMSON ODONGO 3RD APPLICANT**

RULING

1. Vide Notice of Motion dated 9th January 2024, the Applicant/Administrator, Mr. Kepher Odongo Abadha seeks various orders on behalf of all the beneficiaries of the deceased John Odongo Abadha.
2. As these proceedings are not opposed and as none of the beneficiaries of the estate is prejudiced by the orders sought, I shall determine each prayer as sought and submitted on by the Administrator/Applicant with the concurrence of the respective beneficiaries.
3. Initially, the beneficiaries had disagreements but later, after they appeared before me on 18th October 2022, they sought for time to convene a family meeting to sort out their differences and in default, the court would hear the protests and give a ruling.
4. The court implored the parties to reach an amicable settlement and indeed by 14th November 2022, they had all agreed on the mode of distribution of the estate as a result of which this court after examining each beneficiary, confirmed the grant as per the summons for confirmation of the grant dated 21st June 2021.
5. Later, it emerged that the administrators could not complete the distribution process within the stipulated timelines hence they sought more time to complete the process.



6. It is within the same period that the administrators and beneficiaries now by their Notice of Motion dated 9th January 2024 now seek what appears to be a review of the orders confirming the grant in order to complete the distribution process.
7. The application is supported by the affidavit sworn by Kepher Odongo Abadha.
8. It merges now that the distribution of the estate in percentiles became impossible after the survey was done hence the review of the distribution to reflect the actual acreage on the ground.
9. As all beneficiaries are agreeable that the acreage mode is the most appropriate mode of sharing of the estate, I hereby review and set aside earlier mode of distribution in percentiles and substitute it with the distribution in acreage as contained in the schedule at paragraph 5 of the affidavit of Kepher Ojil Odongo, Nelson Odongo and Samson Odongo sworn on 13th October 2023.
10. Secondly, and in addition, as Peter Omondi Odongo has since died, as evidenced by the annexed burial permit showing that he died on 26th January 2022, and with evidence that he was not survived by any dependant, with the agreement of all the other beneficiaries, his share in parcel No West Bunyore/Ekwanda/1139 which is shall now be allocated to Tyson Ojok Odongo and the latter shall therefore have a total of 0.10 Ha in Land Parcel No West Bunyore/Ekwanda/1139.
11. Thirdly, as it is further agreed and with the fully signed consent of Sellah Owira Odongo that her portion in the land parcel No West Bunyore Ekwanda/1139 be surrendered to her last-born son Emmanuel Ochung Odongo, the said portions, the court adopts the consensus and directs that 0.27 Ha of West Bunyore/Ekwand/1139 allocated to Sellah Owira Odongo shall now be reallocated to Emmanuel Ochung Odongo.
12. Fourth, as parties confirm that Aggrey Omondi Odongo has since died and is survived by a wife and children, his in West Bunyore/ Ekwanda/1139 measuring 0.08 Ha and 0.25 Ha respectively shall be held by Kepher Ojil Odongo in trust for the minor children of Aggrey Omondi Odongo until they become of age.
13. Fifth, land parcel No West Bunyore/Ekwanda/1146 in which Nelson Odongo has settled shall remain his land.
14. Sixth, Land Parcel No West Bunyore/Ekwanda/1157, 40% thereof remains the property of Nelson Odongo while 25% which was given to Samson Odongo and Erick Odongo shall be registered in the names of their mother, the widow, Sellah Owira Odongo.
15. Seventh, West Bunyore/Ekwanda 1195 which has a dispute pending before Vihiga Environment and Land Court shall pend the outcome of the dispute upon which the family shall agree on the way forward since its outcome is unknown.
16. For the above reasons, I hereby direct that a rectified and amended certificate of confirmation shall issue reflecting the above directives/orders.
17. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF FEBRUARY, 2024

R. E. ABURILI

JUDGE

