



REPUBLIC OF KENYA



**In re Estate of Odhiambo Amuga Olaka (Deceased) (Succession Cause 88 of 2015) [2024] KEHC 3829 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3829 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BUSIA**

**SUCCESSION CAUSE 88 OF 2015**

**WM MUSYOKA, J**

**APRIL 19, 2024**

**IN THE MATTER OF THE ESTATE OF ODHIAMBO AMUGA OLAKA (DECEASED)**

**RULING**

1. I delivered a ruling herein, on 2 summonses for confirmation of grant, dated 9<sup>th</sup> November 2022 and 6<sup>th</sup> December 2022. I did not determine the said summonses, for I postponed them, to allow the administrators time to comply with Articles 2(4) and 37 of the *Constitution*, by disclosing whether or not the deceased was survived by daughters. Both sides have complied, by filing affidavits.
2. The first in time was filed by Silvester Omondi Asimo, a grandson of the deceased. He swore his affidavit on 11<sup>th</sup> December 2023. He disclosed that his grandfather, the deceased herein, had only sons, and no daughters. He has named the 3 sons, 2 who have passed on, and the 1 surviving, who is his co-administrator. He has also disclosed the children of the 2 dead sons of the deceased, which includes his own father, Philip Asimo Odhiambo.
3. Augustine Wesonga Odhiambo, a son of the deceased, filed his affidavit next, sworn on 28<sup>th</sup> February 2024. He discloses that the deceased had 4 daughters, who he has named in the affidavit. 3 are dead, but 1 is alive. The 1 alive, Getruda Aor Obandha, has sworn an affidavit, where she identifies herself as a daughter of the deceased, and says that her 3 sisters were dead. By her affidavit, she surrenders her share to her surviving brother, Augustine Wesonga Odhiambo. There is an affidavit by Obiero Alek, a child of one of the dead daughters of the deceased, named as Rose Odinga. He avers that he surrenders his late mother's share to his surviving uncle, Augustine Wesonga Odhiambo.
4. There was no disclosure whether the other 2 dead daughters of the deceased had been survived by issue. I am talking of the late Magret Olaka Ongoma and the late Kelesenthia Awino. If they had offspring, then such offspring would be entitled, and I should not proceed to determine the matter without their input. If the 2 left behind no immediate survivors, then that fact ought to be disclosed. It should also be disclosed whether Rose Odinga had other children, apart from Obiero Alek, and if she did, then the consents of those other children, on whether they support surrender of their mother's share, should be filed.



5. Consequently, I give the administrators 30 days to file further affidavits, to address the issues, that I have raised in paragraph 4 hereabove. The matter shall be mentioned on a date that I shall allocate at the delivery of this ruling.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUSIA THIS 19<sup>TH</sup> DAY OF APRIL 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant

**Advocates**

Mr. Jumba, instructed by Balongo & Associates, Advocates for Augustine Wesonga Odhiambo

Mr. Ashioya, instructed by Ashioya & Company, Advocates for Silvester Omondi Asimo and Patrick Odhiambo Onyango

