



In re Estate of James Oira Mogare (Deceased (Miscellaneous Succession Cause E049 of 2024) [2024] KEHC 11102 (KLR) (23 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION CAUSE E049 OF 2024**

RE ABURILI, J

SEPTEMBER 23, 2024

**IN THE MATTER OF THE ESTATE OF JAMES OIRA MOGARE (DECEASED)
(ARISING FROM KISUMU HC SUCCESSION CAUSE NO. 339A OF 2003)**

IN THE MATTER OF

GEORGEMOGAR OIRA 1ST APPLICANT

JACLINE MONG'INA OIRA 2ND APPLICANT

RULING

1. This matter, though appearing new, relates to the estate of the late James Oira Mogare who died on 17th September 1997 aged 60 years.
2. Vide Succession Cause No. 339A of 2003, his widow Zibiah Bosibori Oira petitioned for grant of letters of administration to administer the estate which grant was issued to her on 8th August 2003 and confirmed on 5th May 2004.
3. In the confirmed grant, the widow Zibiah Bosibori is listed as the sole beneficiary of the entire estate comprising several properties.
4. From the now new application dated 24th June 2024, George Mogare Oira and Jackline Mong'ina Oira the children of the deceased now petition to administer what they call unadministered assets of the estate of their late father.
5. I have perused the documents in support and inquired of counsel for the Applicants and they confirm that the sole administratrix died in 2014 before she had distributed the estate of the eligible beneficiaries although the certificate of confirmation of grant erroneously list her as the sole beneficiary.
6. That being the case, it is now obvious that the grant issued to Zibiah Bosibori (now deceased) on 8th August 2004 became useless and inoperative and that since all assets of the estate of the deceased James



Oira Mogare remain not distributed, the only order that commends itself to this court is to revoke and annul the said grant.

7. Accordingly, I invoke the provisions of Section 76 (d) (i) of the *Law of Succession Act* and proceed to revoke and annul the grant issued to Zibiah Bosibori Oira on 8th August 2003 and confirmed on 5th May 2004 in Kisumu HC Succession *No. 339A of 2003* and order that the surviving beneficiaries of the estate of James Oira Mogare (deceased) shall petition for a fresh grant.
8. This is so because succession causes can be filed afresh without plea of res judicata. Accordingly, the beneficiaries of the deceased's estate are at liberty to file a fresh petition for grant of letters of administration intestate before Nyamira High Court, which is the court with geographical jurisdiction of the deceased's domicile and as observed in the list of assets of the estate, they are within Nyamira Court. None of those assets are within Kisumu County.
9. Thus, as the deceased was domiciled in the former large Kisii District which is in Tindereti area and now falling geographically within Nyamira County and therefore within the Geographical jurisdiction of Nyamira High Court, the beneficiaries shall file a fresh petition before Nyamira High Court for consideration.
10. This file is closed.
11. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF SEPTEMBER, 2024

R. E. ABURILI

JUDGE

