



**In re Estate of Wilson Omolo Oloo (Deceased) (Succession Cause 186 of 2009) [2024] KEHC 12135 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12135 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 186 OF 2009**

**S MBUNGI, J**

**OCTOBER 11, 2024**

**IN THE MATTER OF THE ESTATE OF WILSON OMOLO OLOO (DECEASED)**

**BETWEEN**

**YUNIA OGANGA OMOLO ..... PETITIONER**

**AND**

**CHRISPTOPHER OWITI OMOLO ..... OBJECTOR**

**AND**

**FESTUS KUNGU OMOLO ..... APPLICANT**

**AND**

**JOYCE ISANJILI ODARI ..... INTERESTED PARTY**

**JUDGMENT**

1. Upon hearing an affidavit of protest by Christopher Owiti Omolo Sunguti, Rose Namu, Joyce Isanjili Odari, Andrew Shikho Likare and Priscilla Indusa Matesi sworn on 18<sup>th</sup> July 2022, against the summons for confirmation of grant, the court (Hon. Justice P.J. Otieno) through a ruling dated 29<sup>th</sup> May, 2023 determined as follows: -

“...On the face of it, the summons for confirmation of grant fails to capture all the beneficiaries of the estate of the deceased, who have however been introduced by the protesters. It is however not clear whether the second house had 8, 9 or 10 children. It is difficult because while the joint affidavit of the protesters identifies 8 children, the further affidavit by the second administrator identify nine children while in another further affidavit sworn on 22.11.2022 ten children are enumerated. What is clear beyond dispute is however that the first house sold what they considered theirs to the interested party, moved out of the deceased land and settled elsewhere and are not claiming any additional shares in the



estate. That the sale, to a neighbor, was never protested to by the 2<sup>nd</sup> house for a period in excess of thirty years demonstrates to court that the second family considered the portion sold to belong rightfully to the first house and not them. It equally aligns with the protesters position that the first house was given by the deceased five acres which was then curved out and demarcated by a boundary. The court thus determines that the deceased had expressed a wish that the estate be shared between the two houses by the 1<sup>st</sup> house getting five acres while the second getting the balance of the land. Such a wish ought to be respected and enforced unless it disclosed an unfair or discriminative inheritance.

In the circumstances and facts disclosed in this case, the court considers the wishes of the deceased to adhere to the principle of equal sharing while using the two houses as the basic units of sharing. It is therefore determined that the estate be shared by allocating the five acres admitted to have been unlawfully sold by the first house to the interested party while the remainder of the land shall go to the 2<sup>nd</sup> house. The member of each house shall share their portion equally among all unless one opts to renounce. The interested party whose interest is not challenged by the 1<sup>st</sup> house may then concur with members of that house on how the land gets transferred.

Because the court is unclear on who are the exact beneficiaries and who among the deceased beneficiaries left behind which children, it is directed that parties shall within 21 days from the date of this judgment file affidavits to set out the beneficiaries from each house...”

2. The two administrators were instructed to file summons for confirmation, which they did.
3. The objector, through summons dated 11.07.2023 and filed in court on 12.07.2023 listed the beneficiaries of the parcel known as ISUKHA/KAMBIRI/60 as follows: -
  - i. Christopher Owiti Omollo – 5 acres
  - ii. Festus Kungu Omollo – 0.6 Acres
  - iii. Andrea Angoma Omollo – 0.6 Acres
  - iv. Joshua Boma Omollo – 0.6 Acres
  - v. Isaac Dunga Omollo – 0.6 Acres
  - vi. John Onyango Omollo – 0.6 Acres
  - vii. Benjamin Guda Omollo – 0.6 Acres
  - viii. Julius Hosea Omollo – 0.6 Acres
  - ix. Jane Awiti Omollo – 0.6 Acres
  - x. Charles Lero Omollo – 0.6 Acres
  - xi. Rose Otieno Omollo – 0.6 Acres
4. The petitioner also filed summons for confirmation dated 12.02.2024 and listed the beneficiarie

### **Objector’s submissions**

3. The objector, through their counsel, filed submissions dated 2<sup>nd</sup> July 2024 and stated that as per the Surveyors report, both parties are in agreement that the parcel of land measures 13 acres, and not 11 acres as was earlier stated.



4. The objector further submitted that as per this court's ruling dated 29<sup>th</sup> May 2023, the 1<sup>st</sup> house would get 5.3 acres which would straightforwardly be given to the interested party since there is no dispute that she actually bought the land from the first family and has stayed on it since early 1980s. The balance of 7.7 acres would then be shared equally among the children of the second house as listed in the affidavit of FESTUS KUNGU OMOLLO sworn on 12<sup>th</sup> February, 2024.

#### **Petitioner's submissions**

5. The petitioner filed submissions dated 19<sup>th</sup> July 2024 through their counsel, seeking that the court adopts an equal distribution scheme as proposed by the petitioner, basing this on section 38 of the Laws of Succession Act, which states that property should be equally divided among the surviving children.
6. The objector herein vide an application for confirmation of grant dated 12<sup>th</sup> February 2024 proposes that the land be shared as follows :-

2 acres – Sisters to share equally

- a. Rose Otieno Omollo
- b. Jane Awiti
- c. Rose Omollo

9 acres – Brothers to share equally

- a. Christopher Owiti Omollo
- b. Andrea Angoga Omollo (Deceased)
- c. Joshua Boma Omollo
- d. Isaac Dunga Omollo (Deceased)
- e. John Onyango Omollo
- f. Benjamin Guda Omollo
- g. Julius Hosea Omollo (Deceased)
- h. Charles Lero Omollo (Deceased)
- i. Festus Kungu Omollo

#### **Analysis and Determination.**

7. I have looked at the summons for confirmation, the supporting affidavits and the submissions by the parties.
8. The parties in their affidavits, seem now to agree on the number of children the deceased left behind. Festus Kungu Omollo proposes that the estate is shared equally among the surviving dependents, whilst Christopher proposes the distribution to be done as per the court ruling of 29.05.2023.
9. The court, on 29.05.2023, determined on how the estate of the deceased was to be shared.
10. The court dismissed the summons of confirmation because it was unclear how many children the deceased had.



11. Since now the parties seem to agree on the rightful number of the children of the deceased, the automatic beneficiaries (but if dead, their children).
12. The only issue now is distribution, which to me was determined by the court in its ruling of 29.05.2023. I have reproduced the paragraphs 15, 16 and 17 herein above.
13. I note that Festus Kungu Omollo is not agreeable to the mode of distribution ordered by the court. That court was presided by a Judge of the High Court, like the judge who is doing this judgment. The law does not allow a judge of the high court to act as an appellate court over a decision rendered by another high court judge for they are sized of similar jurisdiction.
14. The only option open to Festus Kungu Omollo is to appeal against the ruling of 29.05.2024.
15. There being no appeal or review proffered against the said ruling, this court's hands are tied and I do therefore order that the distribution of the deceased's estate be as ordered in the ruling dated 29.05.2023. The portion of 5.3 Acres shall go to the first house while the balance shall go to the second house as per paragraph 15 of the ruling whereupon the of the second house shall share equally. If any of the deceased's children died, their children to get their share.
16. This being a family matter, this party to be its own cost.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 11<sup>TH</sup> OCTOBER 2024.**

**S.N MBUNGI**

**JUDGE.**

In the presence of:

Mr. Isiaho holding brief for Mr. Mukavale .J. for the objector present

Petitioner – absent

Court Assistant – Elizabeth Angong'a

