



**In re Estate of Osoro Oeri (Deceased) (Succession Cause
364 of 1998) [2024] KEHC 12076 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12076 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 364 OF 1998**

TA ODERA, J

OCTOBER 4, 2024

**IN THE MATTER OF THE ESTATE OF OSORO OERI-DECEASED
IN THE MATTER OF THE PETITION FOR THE
LETTERS OF ADMINISTRATION INTESTATE**

BETWEEN

SAMWEL GODFREY OERI PETITIONER

AND

HENRY OSORO NYABUTO 1ST RESPONDENT

MARTHA KWAMBOKA OSORO 2ND RESPONDENT

ZACHARY ONYENI 3RD RESPONDENT

RULING

1. The Petitioner/Applicant herein filed an application under Rules 44, 63, 66 and 73 of the Probate and Administration rules, Section 76 of the [Law of Succession Act](#), Cap 160 and all enabling provisions of the law seeking orders that;
2.
 - a. This Honorable court be pleased to amend, and/or rectify the grant of letters of distribution confirmed on 31st March, 2009.
 - b. This Honorable court be pleased to reconfirm the grant as per the proposed mode of distribution
 - c. This honorable court be pleased to amend the re-confirmed grant



- d. This Honorable court be pleased to make any such orders as it may deem just and expedient in the circumstances.
 - e. That cost of the Application be born out of the estate of the deceased.
3. The Application is supported by the grounds on the face of the Application together with the supporting Affidavit of the Applicant. The Applicant averred that the grant in respect to the estate of the late Osoro Oeri was confirmed on 31st March, 2009 without the participation of the 3rd Respondent which ultimately deprived him off the rightful beneficiaries of their entitlement. He decried that the 1st Respondent took advantage of the disparities and misused the grant and thus disinheriting the rightful beneficiaries of the entitlement and that he has not been co-operative with other beneficiaries who are equally disinherited. He decried too that if the amendment and rectification are not carried out other beneficiaries will be disinherited.
 4. From the record, it is clear that the 3rd Respondent is in support of the Application being that the same is being argued in his favor. Equally from the record there is no evidence of service upon the 1st Respondent and his learned counsel, the firm of Koina Onyancha and Co. Advocates. The 2nd Respondent who was respondent through her learned counsel on 20th November, 2023, in response to the Application submitted that the suit property that was the subject of the contestation had already been transmitted and titles issued.
 5. I further take judicial notice that this Application is similar to the Application dated 19th June, 2019 that was filed by the 3rd Respondent given that the orders sought herein as similar given that they all seek a rectification of the confirmed grant. The 3rd Respondent's Application was being supported by the Applicant herein.
 6. Hon. Justice Ndung'u vide his ruling dated 14th April, 2021 dismissed the 3rd Respondent's Application. The learned Judge observed that the 3rd Respondent did not demonstrate that the confirmed grant dated 31st March, 2009 was unlawful nor did he give a satisfactory reason for why it should be rectified more than a decade after it was issued. The learned Judge equally observed that the parties herein who are members of the 1st house were all catered for in the confirmed grant dated 31st March, 2009. The learned Judge observed further that any claim based on a party's view of his or her nature and extent of entitlement to the estate and specifically any claim over what a particular portion or size of land a party is entitled to in distribution are matters to be dealt with at confirmation stage and that the same could not be a matter under the purview of section 76 of the law of section 76 of the law of succession 74. Further, relying on the case of the Estate of Reuben Mugesani Bulimu (Deceased) Succession cause No. 847 of 2013 the learned observed too that the transmission of the property of the estate of the deceased following the confirmation of the grant was not within the scope of this court.
 7. A determined 3rd Respondent filed an Application dated 27th April, 2021 for review of Ruling of the court dated 14th April 2021 claiming that the court did not consider the issues the Parties had agreed during their mediation which was intended to correcting the errors made prior to the confirmation of the grant. He claimed that there were two certificates of confirmation of grant. The Application was vehemently opposed by the 1st Respondent herein who stated that same was intended to asking the court to hear an Appeal of a matter it had already heard and disposed. The matter was later referred to Mediation. A partial Mediation Agreement dated 22nd September, 2022 which captured Applicant and 3rd Respondent as the only parties was filed in court. In the mediation Agreement, the parties threw the ball to this court to make a determination as to whether, the earlier distribution should have sustained or a redistribution be ordered. Basically parties in their settlement were asking this court to rehear the Application by the 3rd Respondent had been dismissed for reasons that I have advanced herein above.



8. Having found that the Application herein it seeks similar orders the ones that were sought in the Application filed by the 3rd Respondent that was dismissed by this court vide its ruling dated 14th April, 2021, this court has no business entertaining the same.
9. In the end this court finds the Applicant's Application dated March 1, 2021 is not merited and proceeds to dismiss the same with no orders as to costs.
10. No further application should be filed without leave of the court.
File is closed.
It is so ordered.

T.A. ODERA

JUDGE

4.10.24

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF:

CA: Oigo

Parties Absent

