

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.103 OF 2012

IN THE MATTER OF ESTATE OF

SIMOM OKEDI AWUOLO.....(DECEASED)

AND

IN THE MATTER OF APPLICATION BY

CHRISTOPHER OKEDI AWUOLO and

BISANSIO EMOJONG OKEDI.....PETITIONER/RESPONDENTS

VERSUS

BEATRICE MUKHANGALA LUMBEMBE.....OBJECTOR/APPLICANT

RULING

1. The grant of letters of administration intestate respecting the estate of the late **SIMON OKEDI AWUOLO (DECEASED)** was issued on the 23rd May 2012 to **CHRISTOPHER OKEDI AWOLO (first petitioner)** and Bisansio Emojong Okedi (**second petitioner**) but they waited for a period of about eight (8) years to take out the necessary summons for confirmation of grant dated **6th FEBRUARY 2019**. The reasons for the inordinate delay are not explained in the supporting affidavit. Nonetheless, the petitioners and the beneficiaries, seemed to have agreed on the issue of distribution of the estate prior to the taking out of the summons for confirmation of the grant.

2. As per the affidavit in support of the petition dated 14th March 2012, the estate properly confirmed eight (8) parcels of land described as South Teso/Apokor/1396, 1506, 1520, 1521, 1526, 1525, 1527 and 1528. These were to be shared among the beneficiaries listed in the affidavit including persons having no kinship with the deceased. Indeed the proposed mode of distribution contained in paragraph seven (7) of the affidavit in support of confirmation of grant appears to cater for all identified beneficiaries thereby paving a sworn way for confirmation of the grant. However an objection to confirmation of the grant was placed by a notice of motion filed on 24th June 2019 by one of the beneficiaries, Beatrice Mukhangala Lubembe respecting land parcel South Teso/Apokor/1396, such that when the matter was stated for hearing of the summons on the 30th January 2020, the court acknowledged the existence of an objection sworn and adjourned the matter to the 15th June 2020, when the apparent objector was directed to file a protest to confirmation of the grant.

3. Accordingly, the objectors notice of motion dated 24th June 2019, was withdrawn and scheduled for an affidavit and protest dated the 12th June 2020, and filed herein on the 15th June 2020. On 3rd March 2021 the court directed that the protest be canvassed by way of affidavit evidence and ordered submissions. In that regard the objector's submissions dated 16th March 2021 were filed herein on 23rd March 2021 by the firm of **MALOPA & CO. ADVOCATES**. While those of the petitioners dated 5th April 2021, were filed herein on 6th April 2021.

4. This court having given due consideration to the objection in the light of the supposing grounds, and those in opposition thereto and also in the light of the rival submissions, notes that the dispute is primarily on only land parcel No.South Teso/Apokor/1396 which regard to the objector's alleged entitlement or share of the same. The distribution of the remaining seven parcels of land is not disputed. The objector thus claims two (2) acres of the disputed parcel rather than five (5) plots within the land as proposed in the summons for confirmation of grant. The claim is seemingly based on a sale agreement whose validity or otherwise would be an issue for determination before a succession court in a succession matter such as the present one. Since the agreement was for sale of an interest in land, the proper forum would be the Environment and Land Court where the objector would present her claim for additional portion of the aforementioned disputed land parcel No.1396, based on the agreement as agreed by the petitioners as legal beneficiaries of the estate of the deceased.

5. It is therefore the finding of this court that the present protest is devoid of merit and is hereby dismissed within the result that the application for confirmation of grant dated 6th February 2019 be and is hereby confirmed in terms of the mode of distribution set out in paragraph seven (7) of the supporting affidavit dated 6th February 2019.

Each party shall bear own costs of the application.

Ordered accordingly.

J.R. KARANJAH

J U D G E

[Read and signed this 13th day of April 2021]