



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

SUCCESSION CAUSE NO.96 OF 2005

IN THE MATTR OF THE ESTATE OF THE LATE ..JAPHET OMORO AGWATA(DECEASED)

AND

JARED ONYANGO

MARGARET OSONGA OMOLO.....PETITIONERS

CHRISTOPHER OWITI AGWATA

R U L I N G

[1] The grant of letters of administration respecting the estate of the late Japheth Omoro Agwata (**deceased**) was issued on 31st January 2006 to Margaret Osonga Omolo and Jared Onyango in their capacities as widow and eldest son of the deceased respectively.

In the petition for the grant filed in court on the 8th September 2005, the survivors of the deceased were shown to be the widow and six (6) children i.e two sons and four daughters.

The sole estate property was identified as land parcel No.Bukhayo/Lupida/631, of which two acres thereof were encumbered in the sense that one Tom Bundiko Mboya and one Mary Were Bunyasi were each entitled to an acre of the property. This interest in the land by the two people was catered for when the grant was confirmed and necessary certificate of confirmation of grant issued on 3rd July 2007, effectively completing the administration process.

[2] However six (6) years later, on the 2nd September 2013, one Grace Akello filed an application dated 29th August 2013, for revocation of the grant. This appears to have been abandoned and/or incorporated to a similar application by one Christopher Owiti Agwata dated 24th January 2015 and filed herein on 2nd February 2015. The later application was compromised by a consent made in court on 6th May, 2015 to the extent that the initial grant dated 31st January 2006 be revoked and a fresh grant be issued. Accordingly, the fresh grant was issued on 16th September 2015 in the name of Jared Onyango alias Robert Omoro, Margaret Osonga Omoro and Christopher Owiti Agwata (**first, second and third administrators/petitioners**) respectively.

[3] A period of thirty (30) days was given to the three administrators to take out the necessary summons for confirmation of grant but they appeared to have gone into deep slumber until the 23rd October 2020 when the application for confirmation of grant dated 11th September 2020 was filed on the basis of the grounds contained in the supporting affidavit which was ironically signed by the third administrator (**Christopher**) only.

Nonetheless, on the 26th November 2020 the second administrator (**Margaret**) filed an affidavit of protest to confirmation of grant dated 25th May, 2020.

[4] The hearing of the protest proceeded by way of affidavit evidence and written submissions which were filed by the second and third administrators through their respective advocates, **Gabriel Fwaya & Co. Advocates** and **Okeyo Ochiel & Co. Advocates**.

Basically, the affidavit of all the three administrators in support of the application for confirmation of the grant on the basis of the proposed and seemingly agreed mode of distribution indicates that the deceased was actually a polygamist with four wives one of whom is now deceased. That, the first house consisted Akoth Omoro as the widow and a son (**now deceased**). The second house consisted of Helda Wandera Anyona, the widow and three sons, two daughters. One son and one daughter are now deceased. The third house consisted of Mary Agwata as the widow (**now deceased**) and the fourth house consisted of Margaret Osuga Omolo as the widow and two sons, four daughters.

[5] The first administrator (**Jared**) is the eldest son of the second administrator (**Margaret**) and they belong to the fourth house of the deceased. The third administrator (**Christopher**) is the son of the deceased's second widow (**Helda**) and both therefore belong to the second house.

The proposed mode of distribution is indicated in paragraph four (4) of the supporting affidavit and the consent on distribution filed herein on 23rd December 2020. However, the supporting affidavit and the consent on distribution are only signed by representatives of the second house of the deceased but not those of the first, third and fourth houses.

[6] Further, the proposed mode of distribution fails to cater for all the four houses of the deceased and includes persons who are not true beneficiaries of the estate. Most importantly, the proposed mode of distribution is clearly discriminatory against some of the surviving widows as well as the daughters of the deceased.

It is therefore true as alleged in the second administrator's affidavit of protest that the summons for confirmation of grant dated 11th September 2020, was taken out by the third administrator without consulting the other two administrators or all houses of the deceased.

Apparently, the application for confirmation of grant was filed before the parties and other beneficiaries agreed on the mode of distribution of the estate property.

In the circumstances, the protest by the second administrator is merited and is hereby upheld to the extent that the summons for confirmation of grant presented by the third administrator dated 11th September 2020 be and is hereby struck out and dismissed with orders that the parties and other beneficiaries do engage and agree on a proper and lawful mode of distribution prior to the taking of a fresh summons for confirmation of grant within the next four (4) months from this date hereof. In default, the matter be forthwith referred to the public trustee for distribution of the estate in accordance with the Law.

The matter be mentioned on 26th October 2021 for a status report.

J.R. KARANJAH

J U D G E

[Read and signed this 22ND day of **JULY 2021**]

[In the presence of Mr. Were for 3rd petitioner and Mr. Okutta holding brief for Mr. Okeyo for protestor]