



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**PROBATE & ADMINISTRATION NO.9 OF 2019**

**IN THE MATTER OF THE ESTATE OF: MIGERE OTUOMA WAGA (DECEASED)**

**BETWEEN**

**BENTA ATIENO ATULA.....APPLICANT/OBJECTOR**

**AND**

**RUSALINA ACHIENG MIGERE.....1<sup>ST</sup> RESPONDENT/PETITIONER**

**DOROTHY ADHIAMBO MIGERE.....2<sup>ND</sup> RESPONDENT/PETITIONER**

**RULING**

1. Benta Atieno Atula, the applicant/objector herein, moved the court by summons for revocation dated 2<sup>nd</sup> May, 2019 under section 76 (a) of the Law of Succession Act, Rules 40, 44 and 73 of Probate and Administration Rules. She is seeking the following orders:

- a) That the honorable court be pleased to revoke/nullify the grant of letters of administration interstate made to the said Rusalia Achieng Migere and Dorothy Adhiambo Migere in this matter on 26<sup>th</sup> March 2008 and subsequent certificate of confirmation of grant issued on the 29<sup>th</sup> May 2009.
- b) That the honorable court thereafter be pleased to order that the petition made by the respondents/petitioners was a nullity and the same be set aside and the applicant/objector be enjoined as one of the beneficiaries of the estate of the deceased.
- c) The honorable court be pleased to declare that the land parcel NO. WEST KASIPUL/KODERA/KARABACH/1910, 1840, 1911, 1449 and any other parcel of land that might have been hived from WEST KASIPUL/KODERA/KARABACH/586 registered as follows: Rusalia Achieng Migere 1910, Bikundo Nyamato 1840, 191, 1449 and any other registered person's name be merged and revert back to original NO. WEST KASIPUL/KODERA/KARABACH/586 and the same be subdivided among the only surviving legal beneficiaries of the estate of OTUOMA MIGERE WAGA (deceased).
- d) The cost of this application be granted to the applicant/objector.

2. The application was premised on the following grounds:

- a) That the grant of letters of administration interstate had been issued to the respondents/petitioners on the 26<sup>th</sup> day of March 2008 and certificate of confirmation of grant issued on 29<sup>th</sup> May 2009.
- b) That the respondents have misrepresented themselves to the honorable court as the beneficiaries of the estate of the deceased person and leaving out the petitioner/objector who is the daughter-in-law of the deceased and living in the same parcel.
- c) That the people listed as beneficiaries such as Bikundo Nyamato and Nerbert Mudachi Chahilu are just purchasers who purchased some portions from WEST KASIPUL/KODERA/KARABACH/586 from the respondent/petitioners after the death of the deceased before lodging the succession.
- d) The applicant/objector is the wife of Peter Odero Migere alias Atula (deceased) the son of Migere Otuoma Waga (deceased) whose estate is in dispute, therefore she has priority over the purchasers.

e) That the 1<sup>st</sup> respondent/petitioner is the second wife of Otuoma Migere Waga after Agnes Migere (deceased) the 1<sup>st</sup> wife who is the mother of Peter Odero Migere, he also left a wife who is the applicant/objector and a son from his 2<sup>nd</sup> marriage named Brian Odero who does not feature on the list of beneficiaries.

f) This application is brought in good faith and not meant to delay the precious time of the honorable court.

3. The respondents were served but did not respond to the application. The averments by the applicant were therefore not challenged.

4. Benta Atieno Atula, the applicant/objector herein has laid a claim on the estate of the deceased by virtue of being a daughter-in-law of the deceased herein and who has been residing on the deceased's property. She has contended that her husband, Peter Odero Migere who is deceased, is the son of the deceased herein.

5. She has further contended that some purchasers from the respondents were included as beneficiaries. The only purchaser who can be recognized is the purchaser from the deceased herein. Any purchaser from the respondents herein can only lay a claim from the person(s) who sold them land. The respondents had no capacity to pass title to them.

6. The application therefore succeeds with an order that any subdivision to land parcel number WEST KASIPUL/KODERA/KARABACH/586 is hereby voided. Any resultant parcels from the subdivisions is nullified and the same to revert back to the original title in the name of the deceased herein. The same ought to be available for distribution to the legitimate beneficiaries.

7. The applicant and the respondents are appointed co-administrators of the estate of the deceased. They are to file a proposal for distribution within 45 days of this ruling failure to do so, the grant will be annulled unless they have sought for extension of time and the same granted.

8. Costs to the applicant.

**DELIVERED AND SIGNED AT HOMA BAY THIS 9TH DAY OF NOVEMBER, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**