

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

SUCCESSION CAUSE NO 31 OF 2017

IN THE MATTER OF THE ESTATE OF WANGA OLE OIYIE (DECEASED)

SAMUEL SHUKURU OLE OIYIE.....PETITIONER/APPLICANT

RULING

1. The petitioner through his counsel, Mr. Kilele has applied under certificate of urgency for the following orders.

1. An order that the court conducts a ground visit in order to observe for itself the ground position, the occupation and use of land parcel No. Cis-Mara/Enabelibeli-Enengetia/101 measuring about 63.0 hectares by each beneficiary before setting down the cause for judgement.

2. In the alternative, this court calls for a surveyor's ground report stating the position and occupation and use of the said land by each beneficiary before setting down the cause for judgement.

3. An order to make provision for costs to be costs in cause.

2. The application is supported by five grounds that are set out on the face of the chamber summons. The major grounds are as follows. First, the matter involves the estate of the deceased who died on 8th June 2001 in respect of the subject land parcel No Cis-Mara/Enabelibeli-Enengetia/101 measuring 63.0 hectares. Second, the visit by the court to the subject land will assist the court in arriving at an informed decision. Thirdly, in considering the distribution of the estate, the court ought to ensure that each beneficiary has access to the Narok-Nakuru road on the upper side and river Siyiapei on the lower side.

3. Additionally, the application is supported by a 19 paragraphs supporting affidavit of the applicant. The major averments are as follows. The applicant is one of the administrators of the estate of the deceased. Second, that letters of administrators had been granted to the three widows of the deceased namely Wanjiru Oiyie, Wairimu Oiyie and Wangoi Oiyie on 31st may 2012 and that the applicant is one of the petitioners having been substituted as one of the petitioners. The deceased had not transferred his properties to the three widows. The other averments are matters that are set out as grounds on the face of the chambers summons. It is not necessary to replicate them here again.

4. The instant application is supported by the other three co-petitioners and the interested parties namely Phylis Oiyie and Mary Oiyie.

5. I have considered the application. It is supported by all the petitioners and the two interested parties. I find that it is in the interests of justice for the court to visit the subject land. This will assist the court in its decision making process.

6. I therefore allow the application in terms of prayer Nos. 1, 2 and 3.

7. There be liberty to the petitioner to vary and /or modify this order upon application.

Ruling signed, dated and delivered in open court at Narok this 19th day of February, 2020 in the presence of all the four petitioners and the two interested parties.

J. M. Bwonwong'a

Judge

19/2/2020