



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 1174 of 2014

IN THE MATTER OF THE ESTATE OF ELKANA MANGÚRO AROT alias

ELKANA MANGÚRO (DECEASED)

BETWEEN

MOSES AROT MANGÚRO.....1ST APPLICANT/OBJECTOR

JACOB AWITI ONDIEK MANGÚRO2ND APPLICANT/OBJECTOR

THOMAS OLOO MANGÚRO3RD APPLICANT/OBJECTOR

AND

OTIENO JOHN MANGÚRO..... PETITIONER/RESPONDENT

JUDGMENT

1. **ELKANA MANGÚRO AROT alias ELKANA MANGÚRO (deceased)** died sometimes on 24th June, 1996.
2. The deceased wives **TRUPHENA OTULA** and **PRISCA ADEYA** are both deceased. Deceased was survived by the following:
 - 1) Moses Arot Mangúro (Son)
 - 2) Jacob Ondiek Mangúro (Son)
 - 3) Thomas Oloo Mangúro (Son)
 - 4) Lawrence Onyango Mangúro (Son)
 - 5) Milton Ouru Mangúro (Son)
 - 6) Joshua Opondo Mangúro (Son)
 - 7) Otieno John Mangúro (Son)
 - 8) Teresa Pamba (Daughter in law)
3. The deceased owned four parcels of land as follows:
 - 1) **L.R. NO. KANYADA/KANYABALA/1021**
 - 2) **L.R. NO. KANYADA/KANYABALA/1024**
 - 3) **L.R. NO. KANYADA/KANYABALA/1239**
 - 4) **L.R. NO. KANYADA/KANYABALA/1033**

4. During his life time, the deceased caused was **L.R. NO. KANYADA/KANYABALA/1033** to be partitioned into 5 portions each measuring 1.32 Ha, one for himself and the other four in the names of his sons as follows:

- 1) **L.R. NO. KANYADA/KANYABALA/3365** in deceased's name
- 2) **L.R. NO. KANYADA/KANYABALA/3366** in the name of Oloo Mangúro
- 3) **L.R. NO. KANYADA/KANYABALA/3367** in the name of Joshua Opondo Mangúro
- 4) **L.R. NO. KANYADA/KANYABALA/3368** in the name of Milton Ouru Mangúro
- 5) **L.R. NO. KANYADA/KANYABALA/3369** in the name of Ondiek Mangúro

5. Subsequent to deceased's death, **L.R. NO. KANYADA/KANYABALA/1021** was on 10.04.17 transferred to the name of his son Lawrence Onyango Mangúro.

6. Contrary to the 1st Objector/Applicant's assertion that he bought **L.R. NO. KANYADA/KANYABALA/1024**, the Petitioner stated that the land **Page 3 of 13** belonged to the deceased and that he had on 08.06.79 caused it to be registered in the name of Musa Arot (1st Objector/Applicant) and Teresa Okolo w/o Pamba as evidenced by a search certificate and adjudication record marked **PEXH. 7 (a)** and **PEXH. 7 (b)**.

7. **L.R. NO. KANYADA/KANYABALA/1024** measuring approximately 4.4 Ha was subsequently portioned into three portions **L.R. NO. KANYADA/KANYABALA/3991** measuring approximately 2.67 Ha in the name of Teresa Okello Pamba; and **L.R. NO. KANYADA/KANYABALA/3989** measuring approximately 0.64 Ha and **L.R. NO. KANYADA/KANYABALA/3990** measuring approximately 1.09 Ha in the name of Moses Arot (1st Objector/Applicant) which parcels he transferred to his sons.

8. The Petitioner stated although him and Moses Arot had settled on **L.R. NO. KANYADA/KANYABALA/3365**, he caused it to be transferred to his **Page 4 of 13** sole name for the reason that that he was the only son that had not benefitted from his father's estate. He conceded that upon obtaining the Certificate of Confirmation of Grant in the deceased's estate, he caused **NO. KANYADA/KANYABALA/3365** to be partitioned into two portions **NO. KANYADA/KANYABALA/4261** and **NO. KANYADA/KANYABALA/4262** both in his name.

Analysis and Determination

9. I have considered the objection vis-à-vis the evidence on record and submission filed on behalf of both parties.

10. Since the dispute herein entirely relates to distribution of deceased's estate, revocation of the letters of administration will in my considered view not serve any meaningful purpose and the prayer for revocation is declined.

11. It is on record that the deceased had during lifetime settled some of his property for the benefit of his children as follows.

- 1) **L.R. NO. KANYADA/KANYABALA/3366** in the name of Oloo Mangúro measuring approximately 1.32 Ha
- 2) **L.R. NO. KANYADA/KANYABALA/3367** in the name of Joshua Opondo Mangúro measuring approximately 1.32 Ha
- 3) **L.R. NO. KANYADA/KANYABALA/3368** in the name of Milton Ouru Mangúro measuring approximately 1.32 Ha
- 4) **L.R. NO. KANYADA/KANYABALA/3369** in the name of Ondiek Mangúro measuring approximately 1.32 Ha

12. Although Moses Arot (1st Objector/Applicant) alleges to have bought land parcel **L.R. NO. KANYADA/KANYABALA/1024**, the evidence on record contained in the adjudication record marked **PEXH. 7 (b)** demonstrates otherwise. I am therefore convinced on a balance of probability that **L.R. NO. KANYADA/KANYABALA/1024** forms part of the deceased's estate.

13. The dispute herein is entirely between the Petitioner and the 1st Objector/Applicant and this court in considering whether or not the 1st Objector/Applicant is entitled to a share of **L.R. NO. KANYADA/KANYABALA/3365** will be guided by the provisions of Section 42 of the Law of Succession which provides as follows:

Where—

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

14. It is on record that out of **L.R. NO. KANYADA/KANYABALA/1024**, Moses Arot (**1st Objector/Applicant**) received two parcels **L.R. NO. KANYADA/KANYABALA/3989** measuring approximately 0.64 Ha and **L.R. NO. KANYADA/KANYABALA/3990** measuring approximately 1.09 Ha. This translates to 1.73 ha which is 0.41 Ha more than **L.R. NO. KANYADA/KANYABALA/3365** half a share of which he now claims.

15. There's evidence that the dispute between the Petitioner and the **1st Objector/Applicant** was adjudicated by the Land Registrar who on 14.08.13 directed that the **1st Objector/Applicant** retains part of **L.R. NO. KANYADA/KANYABALA/3365** that he is in occupation of in exchange with an equal portion of **L.R. NO. KANYADA/KANYABALA/1024** in favour of the Petitioner/Respondent.

16. On 06.07.16, the **1st Objector/Applicant** in total defiance of the Land Registrar's directions caused **L.R. NO. KANYADA/KANYABALA/1024** to be partitioned into three portions **L.R. NO. KANYADA/KANYABALA/3991** measuring approximately 2.67 Ha in the name of Teresa Okello Pamba; and **L.R. NO. KANYADA/KANYABALA/3989** measuring approximately 0.64 Ha and **L.R. NO. KANYADA/KANYABALA/3990** measuring approximately 1.09 Ha in his name.

17. In a further bid to defeat the Petitioner's claim, the **1st Objector/Applicant** on 08.07.16 caused **L.R. NO. KANYADA/KANYABALA/3989** and **L.R. NO. KANYADA/KANYABALA/3990** to be transferred to his sons.

18. Evidently, the **1st Objector/Applicant** has not come to court with clean hands and whereas he wants the court to believe that he is the victim, the evidence on record discloses that he is in fact the aggressor.

19. There would be no justification, and it is not in the interest of justice that the **1st Objector/Applicant** should benefit from his father's estate more than any of his siblings and especially the Petitioner herein.

20. Having said that however, it is not disputed that the **1st Objector/Applicant** and the Petitioner have both been in occupation of **L.R. NO. KANYADA/KANYABALA/3365**. It would therefore not be in the interest of justice to uproot the **1st Objector/Applicant** from the said land parcel and that must have informed the Land Registrar's decision when he directed that the **1st Objector/Applicant** retains part of **L.R. NO. KANYADA/KANYABALA/3365** in exchange with an equal portion of **L.R. NO. KANYADA/KANYABALA/1024** in favour of the Petitioner.

21. I entirely agree with the decision of the Land Registrar that the **1st Objector/Applicant** ought to retain the portion he is occupying on **L.R. NO. KANYADA/KANYABALA/3365** in exchange with an equal portion of **L.R. NO. KANYADA/KANYABALA/1024** in favour of the Petitioner/Respondent.

22. Consequently, it is hereby ordered **THAT**:

- a) **The prayer for revocation of Letters of Administration issued to the Petitioner on 26th February, 2015 is declined**
- b) **The deceased's family is directed to agree on the mode of distribution of L.R. NO. KANYADA/KANYABALA/1239 which is still in deceased's name.**
- c) **Pending further orders of this court, the Land Registrar, Homabay, is hereby directed to forthwith register a restriction against L.R. NO. KANYADA/KANYABALA/3989 and L.R. NO. KANYADA/KANYABALA/3990 upon service of this order by the Petitioner**
- d) **The Land Registrar, Homabay is further directed to ascertain the area of L.R. NO. KANYADA/KANYABALA/3365 occupied by OTIENO JOHN MANGÚRO and by MOSES AROT MANGÚRO and to file a report with the court within 30 days of service of this order by the Petitioner**
- e) **Mention on 15th June, 2019, before the Deputy Registrar of this court to confirm filing of the Land Registrar's report and for further orders**

DATED THIS 14th DAY OF May 2020

T. W. CHERERE

JUDGE

This judgment has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice vide Gazette Notice no. 3137 of 17th April, 2020.