



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**SUCCESSION CAUSE NO. 659 OF 2014**  
**IN THE MATTER OF THE ESTATE OF RAPHAEL NYAJUOGA ONDUOGO**  
**(DECEASED)**  
**BETWEEN**  
**KASSIM OTIENO OPOLO.....APPLICANT/OBJECTOR**  
**AND**  
**JOSINTER ATIENO OCHIENG & CAREN AKINYI**  
**NYAJUOGA.....PETITIONERS/RESPONDENTS**  
**JUDGMENT**

1. **Raphael Nyajuoga Onduogo (deceased)** died sometimes on 06th February, 2008.
2. By a letter dated 16.07.2014, the Chief, Town Location in Kisumu stated that the deceased was survived by his daughters **JOSINTER ATIENO OCHIENG & her sister CAREN AKINYI NYAJUOGA**.
3. Letters of administration were issued jointly to the Petitioners/Respondents on 19th January, 2015.
4. Subsequently, a certificate of confirmation of grant was issued on 19th September, 2017 distributing the whole of deceased's estate comprised in **LR. KISUMU/KANYAKWAR B/ 378** jointly to the Petitioners/Respondents.
5. By an application dated 28th June, 2019 filed on 01st July, 2019, filed on even date, **KASSIM OTIENO OPOLO (Objector/Applicant)**, a nephew to the deceased applied for revocation of the Letters of Administration and certificate of confirmation issued in favour of the Petitioners/Respondents on the ground that they were not related to the deceased and that the grant was obtained fraudulently.

**Objector/Applicants' Case**

6. The Objector/Applicant stated that he was son to deceased's brother. It was his evidence that the deceased was married to one Gaudentia Aoko who died without a child and had in 2007 bequeathed his land **LR. KISUMU/KANYAKWAR B/ 378** to him. He conceded that he had caused the said asset to be transferred to his name on 04.07.11 albeit without a court order. His witnesses, Michael Odhiambo Ogingo and Samuel Namila Onduogo who are deceased's brothers similarly denied that the Petitioners/Respondents are deceased's children.

**Petitioners'/Respondents' Case**

7. **JOSINTER ATIENO OCHIENG**, the 1st Petitioner stated that her father, the deceased herein had three wives, Hellen Atieno (deceased) who begot Caren Akinyi Nyajuoga, the 2nd Petitioner who died in February, 2019; her mother Margaret Awino (deceased) and Gaudentia Aoko (deceased) who begot no child. She faulted the Objector/Applicant and his witnesses for attempting to disinherit them only because their mothers and the deceased had fallen out and parted ways.

8. **Bonface Rioga** stated that he knew the deceased, his family and siblings well

since deceased's father had inherited his mother and they had lived together as family. He reiterated the 1st Petitioner/Respondent's evidence that the deceased herein had three wives, Hellen Atieno (deceased) who begot Caren Akinyi Nyajuoga (deceased); Margaret Awino (deceased) 1st Petitioner's mother and Gaudentia Aoko (deceased) who begot no child. He supported the Petitioner's claim for her father's estate.

9. In an attempt to explain the relationship between the deceased, the Petitioners and the Objector, Maurice Aloo Aoko tendered a family tree which shows that he shares the same great-grandfather with the Objector/Applicant whereas the objector's father Opolo is brother to the Petitioners' father Nyajuoga. He similarly stated that the deceased herein had three wives, Hellen Atieno (deceased) who begot Caren Akinyi Nyajuoga (deceased); Margaret Awino (deceased) 1st Petitioner's mother and Gaudentia Aoko (deceased) who begot no child. He supported the 1st Petitioner's claim for her father's estate. He also confirmed that he Petitioners' mothers had separated with the deceased at the time he died.

### **Analysis and Determination**

10. I have considered the evidence on record and submissions filed on behalf of both parties and I have deduced the following issues for determination.

**i. Whether the Letters of Administration and Grant should be revoked**

**ii. Who is entitled to inherit the deceased's estate?**

11. Section 76 of the **Law of Succession Act** (hereinafter referred to as *the Act*) provides as follows:

**“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-**

**(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or**

**(ii) to proceed diligently with the administration of the estate; or**

**(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through subsequent circumstances.”**

12. I have considered the Objector's/Applicant's case vis a vis the Petitioners'/Respondents' case. The 1st Petitioner gave a detailed account of the deceased's family including his 3 wives. The family tree provided by Petitioners' witness who stated he had lived with the deceased and his siblings after his mother was inherited by their father was similarly detailed and clearly corroborated the 1st Petitioner's case. The 1st Petitioner struck me as a forthright witness. From the totality of the Objector/Applicant's case, my considered view is that the only reason that the Objector and his witnesses deny that the Petitioners are deceased's children is the fact that their mothers were not buried in their matrimonial home owing to the fact that they had separated with the deceased owing to domestic differences.

13. The chief's letter dated 16.07.2014, which states that the deceased was survived by Josinter Atieno Ochieng and her sister Caren Akinyi Nyajuoga further states that the deceased was a resident of Kanyakwar Sub-Location, Town Location within Winam. Since the deceased was a resident of Kanyakwar, the chief's letter was issued lawfully. No other letter was filed to counter the said chief's letter. I therefore have no doubt that the chief being a neutral party, had no interest in the estate and I have no reason to doubt the contents of his letter which further corroborates the Petitioners'/Respondents' case.

14. From the foregoing, I am persuaded that the Petitioners being children of the deceased lawfully obtained the letter of administration and certificate of confirmation in their joint names.

15. The transfer of deceased's land to the Objector/Applicant was procured by means of a grant issued in Kisumu High Court Succession Cause No. 282 of 2008 in respect of the estate of one **ANDREW ODEYO OTA**. The transfer was fraudulent and amounts to intermeddling with the deceased estate. The Objector opted not to file a cause in the estate of the deceased for obvious reasons that his intention to defraud the heirs of the deceased would have been discovered.

16. The **Act** frowns at intermeddling with the free property of a deceased person and treats it as a very serious criminal charge. Section 45 (a) of the **Act** has emphasized the need to protect the free property of the deceased by providing for a very firm stance on intermeddling and has clothed the court with wide powers to punish for intermeddling and to issue any appropriate order(s) of protection of the estate against any person.

17. From the foregoing analysis, it is hereby ordered **THAT**:

**a) The prayer for revocation of Letters of Administration and Certificate of Confirmation of Grant issued to the Petitioners/Respondents issued on 19.01.15 and 19.09.17 respectively is unmerited and it is declined**

**b) The Objection is dismissed with costs to the Petitioners/Respondents**

**DATED THIS 14th DAY OF May 2020**

**T. W. CHERERE**

**JUDGE**

**Court Assistants- Ms. Amondi/Ms. Okodoi**

**For Objector/Applicants- Gadhia & Otieno Advocates**

**For Petitioner/Respondent- Omondi, Abande & Co. Advocates**

**Order**

**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.**