



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 626 OF 2013

IN THE MATTER OF THE ESTATE OF JOHN WANJARE OKOTH ALIAS OKOTH WANJARE(DECEASED)

BETWEEN

PRISCA OLOO OKOTH.....APPLICANT

AND

ELLY OTIENO OKOTH.....1ST PROTESTOR

DAVID WANJARE WANJARE.....2ND PROTESTOR

RULING

1. Letters of administration were issued to the Applicant (widow) on 30.05.2014.
2. Certificate of confirmation of grant was issued on 07.04.15 distribution the deceased's estate in **LR. SOUTH SAKWA/BAR/KOWINO/2585** solely to the Applicant (widow).
3. The Applicant (widow) has now discovered **WEST UYOMA/KAGWA/503** which forms part of deceased's estate but which was not distributed and has proposed that the same be distributed to her and 7 of 13 of deceased's children. The 7 children, include 5 of 7 of the Applicant's own children and 2 of 9 of the children of the deceased's 1st wife's (**Jane Ochino Okoth-Deceased**)
4. The 1st protestor proposes that **WEST UYOMA/KAGWA/503** be distributed equally to both houses. The 2nd Protestor on the other hand argues that half of **WEST UYOMA/KAGWA/503** belongs to him and is not available for distribution.
5. The certificate of search demonstrates that the deceased owned ½ of **WEST UYOMA/KAGWA/503** and the other half belongs to the 2nd Protestor. I therefore agree with the 2nd Protestor's assertion that only ½ of **WEST UYOMA/KAGWA/503** is available for distribution to the deceased's family.
6. Section 40 of the Law of Succession Act (*the Act*) provides: -

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children. (Emphasis added).
7. The Applicant has already benefitted from **LR. SOUTH SAKWA/BAR/KOWINO/2585** to the exclusion of all the other beneficiaries.
8. By her conduct as stated hereinabove, the Applicant has demonstrated her desire to disinherit some of deceased's beneficiaries and I find that it is in the interest of justice that there be a second administrator in this matter.
9. Consequently, the application for rectification dated and filed on 28.07.2020 is allowed in the following terms:

1) ELLY OTIENO OKOTH is appointed a co-administrator to the deceased's estate

2) Letters of administration do issue in the names of PRISCA OLOO OKOTH and ELLY OTIENO OKOTH

3) ½ of WEST UYOMA/KAGWA/503 shall be distributed equally to each of the deceased's children

DATED AT KISUMU THIS 14th DAY OF OCTOBER 2020

T. W. CHERERE

JUDGE