



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 18 OF 1968

IN THE MATTER OF THE ESTATE OF THE LATE JECKONIA SIJENJE

BETWEEN

ESTHER SIJENJE..... APPLICANT

-VERSUS -

ERICK JECONIA SIJENJE..... 1ST PROTESTOR

ROSE ADHIAMBO SIJENJE2ND PROTESTOR

MONICA AWUOR SIJENJE3RD PROTESTOR

MARGARET ATIENO OMOLLO4TH PROTESTOR

EMILLY ATIENO SIJENJE5TH PROTESTOR

PAMELA A. SIJENJE.....6TH PROTESTOR

JUDGMENT

JACKONIA SIJENJE died at Kisumu on 22nd December 1967. At the time of his death, the deceased was survived by two widows, namely **HELERIA ANYANGO SIJENJE** and **ESTHER CHELLENGET SIJENJE**.

1. The two widows lodged a petition in court for purposes of seeking Letters of Administration for the Estate of the deceased. The Court granted the petition.

2. At the time of lodging the petition the widows gave a list of their children as follows;

1. Eliakim Apunda;

2. Morris Awuonda;

3. Dina Nyawara;

4. Magret Atieno;

5. Pamela Akinyi;

6. Rose Odhiambo

7. Benson Omondi;

8. Jane Anyango;

9. Amrabu Atieno;

10. Mary Achieng;

11. Okeyo; and

12. Odero.

3. Heleria Anyango Sijenje passed away on 5th August 2012.

4. On 24th October 2012 Erick Jeckonia Sijenje lodged an application in court, seeking to substitute the late Heleria Anyango Sijenje.

5. On 1st November 2012 the court issued an amended Grant of Letters of Administration, showing that Heleria Anyango Sijenje had been substituted by Erick Jeckonia Sijenje.

6. On 28th October 2013, the Administrators of the Estate filed an application for the Confirmation of the Grant. The said application was supported by the affidavit of Esther Chellenget Sijenje.

7. The Applicant identified 2 properties as constituting the Estate, and the said properties are;

a. Plot 98 Block 5/248 (Ondiek House) which has 4

Family Units.

b. Plot 103 or Block 5/253 (Africana), which has 2 shops

and 18 Guest Rooms.

8. At the time, Esther proposed that each of the two households (of Heleria and of Esther, respectively) should be allocated 2 of the family units in Ondiek.

9. She also suggested that Heleria's household be given 1 shop and 6 guest rooms; whilst Esther's household should be given 1 shop and 12 guest rooms.

10. On 28th November 2013 Maurice John Sijenje filed an application seeking an injunction to stop Erick Jeckonia Sijenje from collecting rents from the properties constituting the Estate.

11. In a Ruling dated 24th February 2014, Chemitei J. ordered that an Estate agent be appointed to manage the rental properties.

12. The learned Judge further ordered that the rental proceeds would be deposited in a Joint Account, which was to be in the names of **BRUCE ODENY & COMPANY ADVOCATES** with **MWAMU & COMPANY ADVOCATES**.

13. The advocates were then obliged to release to their respective clients, their appropriate shares of the rental that had been received.

14. On 18th December 2014 Erick Jeckonia Sijenje filed an application, seeking leave to cite Maurice John Sijenje for Contempt of Court.

15. The basis of that application was that Maurice had continued to intermeddle with the Estate, as he had appointed an agent to collect the rents from the properties constituting the Estate.

16. Whilst that application was still subsisting, the application dated 1st October 2013 was canvassed. That was the application for the revocation of the Grant issued to Esther and Erick.

17. On 25th May 2017 Lady Justice E. N. Maina delivered a Ruling, through which the Grant issued to Esther and Erick was revoked.

18. The learned Judge held that following the demise of Heleria, Esther would continue to be the sole Administrator of the Estate.

19. The learned Judge further directed Esther to apply for the confirmation of the Grant. In compliance with the directions of the court, Esther applied for the Confirmation of the Grant. The Summons for Confirmation of Grant was dated 29th January 2018. It was supported by the affidavit of Esther Chellenget Sijenje.

20. The Administrator asked the Court to order that the properties be sold, and that the proceeds of sale should then be shared equitably, amongst the children of the deceased.

21. This application identified the properties of the deceased as being;

i. Kisumu Municipality Block 5/248; and

ii. Kisumu Municipality/Block 5/253, a ¼ share.

22. Apparently, the deceased only owned one-quarter of Parcel No. 253.

23. Five of the deceased's children lodged a protest against the confirmation. Those five are;

1. Roselyne Adhiambo Sijenje;

2. Monica Awuor Sijenje;

3. Margaret Atieno Omollo;

4. Emilly Atieno Sijenje; and

5. Pamela A. Sijenje

24. The said protestors expressed opposition to the sale of the properties.

25. As far as they were concerned, there was no justification for the proposed sale, as the properties had continued to generate steady monthly income to the dependants.

26. The protestors' suggestion was that the properties be transferred to the name of the Administrator (Esther) together with one of the protestors, who would hold the same in trust for all the beneficiaries.

27. In effect, the protestors appear to be saying that the Estate ought not to be distributed.

28. But the protestors also pointed out that the Petitioner, (Esther) had already benefitted during the lifetime of the deceased, when he transferred the following 2 properties to house of the Petitioner;

a. Kisumu/Nyalenda/633, and

b. Kisumu/Manyatta B/29

29. However, when the beneficiaries testified in court, none of them produced any evidence to prove that these two properties belonged to the deceased.

30. If anything, the witnesses confirmed that the parcel **KISUMU/MANYATTA B/29** was registered to the name of **MORRIS SIJENJE**.

31. And Erick Jeckonia Sijenje testified that Morris was the son of Heleria Anyango.

32. As there was no evidence to prove that **Kisumu/Manyatta B/29** and **Kisumu/Nyalenda 633** belonged to the deceased, I find and hold that the said 2 properties do not constitute a part of the Estate.

33. I also find that although Erick Jeckonia Sijenje did testify that the deceased had left behind 3 households (of Heleria, Esther and Jedida), the fact is that there are only 2 households, (of Heleria and Esther).

34. As regards parcel No. 253 (Africana), I find that it is registered in the names of 4 persons, namely;

a. John Morris Owuonda;

b. Ben Bella Omondi;

c. Jeckonia Sijenje; and

d. Eliakim Apunda.

35. Effectively, therefore, the Estate of the late Jeckonia Sijenje owns only one-quarter of Parcel No. 253.

36. I also find that Plot 98, which is **Kisumu Municipality/Block 5/248**, and upon which there stands residential houses commonly referred to as "*Ondiek House*", belongs to the Estate.

37. The Objector, Erick Jeconiah Sijenje submitted that the succession cause had dragged on for 50 years owing to the fact that the family members have not been able to agree on the mode of distribution of the estate.

38. From my evaluation of the history of this succession cause, I am convinced that there is a lot of acrimony between the beneficiaries.
39. Indeed, there exists a criminal case against Morris John Sijenje, who was charged with the offence of **Robbery** Contrary to **Section 295** as read with **Section 296(1)** of the **Penal Code**.
40. The person who was allegedly robbed is Margaret Atieno Omollo, who is one of the Protestors in this case.
41. Meanwhile, the Petitioner (Esther) has complained that the Protestors were very hostile towards her. They are said to have taken over the rental houses standing on **BLOCK 5/248**, by collecting all the rents and utilizing the same, to the exclusion of all the other children of the deceased.
42. In 2014, there was filed an application for leave to institute contempt proceedings against Maurice John Sijenje. It had been asserted that Maurice was flagrantly disobeying Court Orders, by continuing to collect rents after the Court had given clear directions that rents be collected by an Estate Agent.
43. Apparently, Maurice had been acting with impunity, having grown head-strong and boisterous.
44. It was for that reason that Erick sought the leave of the court to cite Maurice for contempt of court, and to have the said Maurice jailed for 6 months.
45. Apart from those incidents, the Court observed that the members of the family were unable to sit on the same side of the court room.
46. In other words, I hold the considered view that unless the estate is distributed soonest, the bad blood between the respective beneficiaries will not permit them to work together for the benefit of all the beneficiaries.
47. At any given time, one or more of the beneficiaries felt that the others were taking advantage of the rents being generated, by keeping to themselves, all the income.
48. It would be an act of insensitivity on my part, if the Court were to make orders which would keep together, persons who were obviously unable to work in harmony.
49. In the event, the Court has 2 options on how to handle the properties. The first option is to have the said properties sub-divided between the beneficiaries.
50. The second option is to have the assets sold-off, and to thereafter have the proceeds distributed between the beneficiaries.
51. The Certificates of Official Search shows that **BLOCK 5/248** is 0.0403 Hectares, whilst **BLOCK 5/253** is 0.0465 Hectares.
52. As the Estate of the late Jeckonia Sijenje owns only one-quarter of **BLOCK 5/253**, it follows that the Estate is only entitled to 0.0116 HA.
53. In my considered view, the said size of the available plot is so small that it would not make sense to have it sub-divided between the beneficiaries.
54. Accordingly, I find that the only way that the Court can do justice to all the beneficiaries, in an equitable way, is to have the one-quarter interest which the deceased owned in **BLOCK 5/253**, sold.
55. Prior to the sale of the said property, it shall be valued. The costs to be incurred during the process of the valuation shall be borne by the Estate.
56. In the alternative, each house may instruct a Valuer, at the expense of the respective houses.
57. If the Valuation Reports reflect varying values, the average shall be deemed to constitute the proper value of the property.
58. The property would then be put out for sale through bidding, which shall be undertaken over a period of 30 days from the date which the bidding process commences.
59. The highest bidder will be declared the purchaser, and she/he or they will be required to deposit 10% immediately.
60. The balance would have to be paid within 30 days of the date when the purchaser is declared.
61. If the balance will not have been paid within the said 30 days, the second highest bidder will be declared the purchaser.
62. Meanwhile, the defaulting bidder shall forfeit the deposit, which shall be applied as part of funds to be distributed between the beneficiaries.

63. Each beneficiary will be at liberty to bid, either alone or together with any other person(s).
64. The three persons who are the registered proprietors of Parcel **No. 523**, shall also be at liberty to bid for the purchase of the portion belonging to the Estate.
65. Meanwhile, **Kisumu Municipality/Block 5/248** shall be divided into two parts, which shall be given to the 2 houses.
66. Esther's household will get 2 houses, whilst Heleria's household will get 2 houses.
67. The two households will be accorded an opportunity to determine for themselves, the name into which their respective shares shall be transferred.
68. Secondly, the whole group of beneficiaries will be accorded an opportunity to agree on how to identify the specific units that shall be transferred to each household.
69. If the beneficiaries fail to agree on the choice of the housing units to be transferred to each of them, the Court shall conduct a session at which the households shall pick their respective units, through lots.
70. And if the households fail to agree on the name or names into which their respective shares will be transferred, the Court will make a determination on the same.
71. The beneficiaries have 10 days from today to make the determinations set out above.
72. The case will come back to Court for further Directions and Orders after the said 10 days.
73. In respect to the issue of costs, I order that each party shall bear his or her own costs of these proceedings.

DATED, SIGNED and DELIVERED at KISUMU this 21st day of January 2019

FRED A. OCHIENG

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