



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MIGORI**

**SUCCESSION CAUSE NO. 405 OF 2014**

**IN THE MATTER OF THE ESTATE OF GEORGE ABOGE OWALO..DECEASED**

**AND**

**IN THE MATTER OF AN APPLICTAION FOR CONFIRMATION OF THE GRANMT**

**BETWEEN**

**BEATRICE WAMUYU ABOGE.....APPLICANT**

**VERSUS**

**ORPHA ADONGO ABOGE.....RESPONDENT**

**AND**

**GEORGE ODHIAMBO**

**GEOFFREY ABICH OWALLO.....INTERESTED PARTIES**

**RULING**

1. This matter was instead scheduled for judgment on the confirmation of the Grant and distribution of the estate. However, towards the tail-end of the proceedings two interested parties namely **George Odhiambo** and **Geoffrey Abich Owallo** joined and raised an issue which this Court is of the considered view that it ought to be determined preliminarily.

2. The issue was whether the deceased herein, **George Aboge Owallo**, held the property known as **South Sakwa/Kadera Lwala/449** in trust of his two brothers namely **Lucas Abich Owallo** and **Tobias Evans Owalo** who are also by now deceased.

3. **Mr. Oguttu** Counsel for the First Administratrix/Petitioner **Orpha Adongo Aboge** submitted at length amid reference to several decisions, and rightly so, that the issue of trust does not lie for determination before this Court but the Environment and Land Court. I have as well so held in various decisions.

4. Since confirmation of the Grant is premised on the net estate of the deceased available for distribution and given that the Interested Parties are claiming two-thirds of the property known as **South Sakwa/Kadera Lwala/449** then in the event they so succeed that may call for re-distribution of the then net estate. Currently, it seems that what constitutes the net estate of the deceased herein has not crystallized. It is for that reason that I opt to allow the parties to pursue the issue before the appropriate forum before this Court finally deals with the distribution of the net estate. I further so hold because there is no consensus on the rest of the properties and a wholesome approach will not only save this Court's time but also the parties' resources as well.

5. For those reasons the following orders do hereby issue: -

**a) Subject to (b) herein, any further proceedings towards confirmation of the Grant and distribution of the estate are hereby stayed pending the determination on whether the property known as South Sakwa/Kadera Lwala/449 was held by the deceased in trust of his brothers; Lucas Abich Owallo and Tobias Evans Owalo.**

**b) The claim shall be lodged within 60 days of the date hereof and in default the stay in (a) above shall lapse and the matter shall be fixed for judgment.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at MIGORI this 14<sup>th</sup> day of February 2019.**

**A. C. MRIMA**

**JUDGE**

**Ruling delivered in open Court and in the presence of: -**

**Mr. Oguttu** Counsel instructed by the firm of Messrs. Oguttu Mboya & Company Advocates for the Applicant/Petitioner.

**Mr. Kisia** Counsel instructed by the firm of Messrs. Edward Kisia & Company Advocates for the First Respondent.

**Mr. Odingo** Counsel instructed by the firm of Messrs. Odingo & Company Advocates for the Second Respondent.

**Mr. Sam Onyango** Counsel instructed by the firm of Messrs. Sam Onyango & Company Advocates for the Interested Parties.

**Evelyn Nyauke** – Court Assistant