



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**SUCCESSION CAUSE NO. 77 OF 2015**

**IN THE MATTER OF THE ESTATE OF ROBERT OGAMBE WAKOYO (DECEASED)**

**BETWEEN**

**CHRISTINE AKOTH OPANY.....PETITIONER/RESPONDENT**

**AND**

**WILKISTER KEMUMA KAOKA.....OBJECTOR/APPLICANT**

**JUDGMENT**

**Introduction**

1. **ROBERT OGAMBE WAKOYO (hereinafter referred to as deceased)** died sometimes on 28th January, 1987. Deceased's estate comprised of the following:

Land Parcel No. **Kisumu/Wathorego/877**

2. By an application dated 16th September, 2016 filed on 20th September, 2016, the petitioner applied for confirmation of the grant.

3. Subsequently, the respondent on 21st October, 2016 filed an affidavit in protest against confirmation of the grant in her capacity as a purchaser of a portion of deceased's land.

4. The court directed that the dispute be determined by way of *viva voce* evidence.

**Objector/Applicant's Case**

5. The applicant/objector stated that she bought a portion of the deceased's Land Parcel No. **Kisumu/Wathorego/877** from one **Juma A. Osunga** on 5th May, 1989 and was on 26th September, 1996 issued with a title deed for her portion being Land Parcel No. **Kisumu/Wathorego/2662**. In support thereof, she tendered a sale agreement and extract of register as DEXH. 2 and 3 respectively.

**Petitioner/Respondent's Case**

6. The petitioner stated that she was daughter in law and widow to deceased's son Manasseh Olang whose siblings are Rose Akech, Peninah Achieng and Jenipher Ayot. Petitioner denied knowledge of any sale of deceased's land to anyone and particularly the objector.

**Analysis and Determination**

7. I have considered the evidence on record and exhibits in respect thereof.

8. At the hearing of the objection, it became apparent that deceased's land had long after his death been sub-divided into three portions i.e

a) Land Parcel No. **Kisumu/Wathorego/2662** which was registered in the objector's name on 26th April, 1996

b) Land Parcel No. **Kisumu/Wathorego/2663** (Registered owner not disclosed)

c) Land Parcel No. **Kisumu/Wathorego/2664** (Registered owner not disclosed)

9. The deceased died intestate and his property that is subject to succession is in terms of Section 34 of the Law of Succession Act Cap 160 Laws of Kenya (**hereinafter referred to as *the Act***) all his free property of which he has not made a will which is capable of taking effect.

10. Section 3 of ***the Act*** defines "**free property**" to mean the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death.

11. From the evidence on record, there is no doubt that the deceased's "**free property**" at the time of his death was Land Parcel No. **Kisumu/Wathorego/877** and not Land Parcel No. **Kisumu/Wathorego/2662** to which this succession cause relates.

12. The petitioner's claim is for her own benefit as widow to deceased's son Manasseh Olang and his siblings Rose Akech, Peninah Achieng and Jenipher Ayot.

13. Whereas there is no doubt that the petitioner has a legitimate claim over deceased's estate, the route she has taken to succeed the deceased is for the foregoing reasons plainly wrong. For avoidance of doubt, Land Parcel No. **Kisumu/Wathorego/2662** to which this succession cause relates was not deceased's "**free property**" at the time of his death.

14. In the result, the objection succeeds with costs to the objector.

**DELIVERED AND SIGNED AT KISUMU THIS 14<sup>th</sup> DAY OF February 2019**

**T. W. CHERERE**

**JUDGE**

**READ IN OPEN COURT IN THE PRESENCE OF-**

**Court Assistant - Felix**

**Petitioner/Respondent - N/A**

**For Petitioner/Respondent - N/A**

**Objector/Applicant - Mr. Anyul**

**For Objector/Applicant -Mr. Ogonda for Mr. Onsongo**