



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**(CORAM: CHERERE-J)**  
**SUCCESSION CAUSE NO. 89 OF 2017**  
**IN THE MATTER OF THE ESTATE OF OWADE NYANGAO NYANGAO (DECEASED)**

**BETWEEN**

**GEORGE OKUMO OOKO.....1ST PETITIONER/RESPONDENT**

**JACKTONE OLALE OLOO.....2ND PETITIONER/RESPONDENT**

**AND**

**GEORGE ODHIAMBO ODERO.....OBJECTOR/APPLICANT**

**JUDGMENT**

**Introduction**

1. **OWADE NYANGAO NYANGAO (DECEASED)** (hereinafter referred to as **deceased**) died sometimes on 20th July, 2006. Deceased's estate comprised of Land Parcel No. **EAST GEM/NYAMNINIA/728**.
2. Letters of administration were issued to the Petitioners/Respondents who describe themselves as grandson and relative of the deceased.
3. By an application dated 14th October, 2015 filed on 15th October, 2015, the Objector/Applicant applied for revocation of the Letters of Administration on the ground that he had an interest in the estate in his capacity as step grandson of deceased's mother.
4. The court directed that the dispute be determined by way of *viva voce* evidence which was taken in **SUCCESSION CAUSE NUMBER 88 OF 2015** which is related to this cause.

**Analysis and Determination**

5. From the evidence on record, it is not disputed that the deceased had three siblings who included MARY AUMA who is the 1st Petitioner's mother, LOLWE and WAMUNGA. The 2nd Petitioner stated that his father Richard Oloo was a step-brother to the deceased. The Applicant/Objector stated that his grandfather OBADIA ODERA inherited deceased's mother DORCAS CHWEYA NYANGAO as his third wife and that his grandmother LUCIA NYAMUNGA was one of the two co-wives to deceased's mother.
6. I have considered the evidence on record, submissions filed on behalf of both parties and the cited authorities and I have deduced the following issues for determination.

**i. Should the Letters of Administration be revoked**

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

7. **Section 66** of the **Law of Succession Act** (hereinafter referred to as **the Act**) provides preference to be given to certain persons to administer deceased's estate where the deceased died intestate in the following terms:

**“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-**

**(a) surviving spouse or spouses, with or without association of other beneficiaries;**

**(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**

**(c) the Public Trustee; and**

**(d) creditors**

8. The deceased was not married and did not have children. One of his siblings MARY AUMA is deceased but nothing was said about his brother’s LOLWE and WAMUNGA. As stated hereinabove, 1st Petitioner is deceased’s nephew by virtue of being son to deceased’s sister whereas the objector is step- grandson of deceased’s mother.

9. Section 76 of 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.”**

10. In Musa Nyaribari Gekone & 2 Others v Peter Miyienda & another [2015] eKLR, the court of Appeal held that:

**“The expression “any interested party” as used in the foregoing provision, in its plain and ordinary meaning, is in my view wide enough to accommodate any person with a right or expectancy in the estate.”**

11. In my considered view, the interest of the Objector who is a step-grandson of the deceased’s mother does not rank in priority to that of the 1st Petitioner who is deceased’s nephew. Having said that, I find and hold that that the Objector’s application for revocation of the Letters of Administration issued to the Petitioners and especially to the 1st petitioner who ranks in priority to him cannot be maintained. (See In re Estate of John Gakunga Njoroge (Deceased) [2015] eKLR).

12. Section 39 of the Act provides:

**(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority**

**a) father; or if dead**

**b) mother; or if dead**

**c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none**

**d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

13. Under the provisions of **Section 66 (b)** and **Section 39 (e)** of *the Act*, the 1st Petitioner who is deceased's nephew has the nearest degree of consanguinity to the deceased as compared to the 2nd Petitioner and the Objector.

14. Consequently, I find and hold that the net intestate estate which comprises Land Parcel No. **EAST GEM/NYAMNINIA/728** registered in the deceased's name ought to devolve upon his siblings **MARY AUMA, LOLWE** and **WAMUNGA** and where deceased, their children.

**Disposition**

15. As a result, it is hereby ordered **THAT**:

a) **The objection has no merit and it is disallowed**

b) **The administrators are directed to within 30 days from today's date, proceed to apply for confirmation of the grant in accordance with the provisions of the law after ascertaining and determining all persons (*MARY AUMA, LOLWE and WAMUNGA and where deceased, their children who are nephews and nieces of the deceased*) and their respective beneficial entitlement to the estate**

c) **The Objector is condemned to pay costs to the Petitioners/Respondents.**

**DELIVERED AND SIGNED AT KISUMU THIS 6TH DAY OF March .2019**

**T. W. CHERERE**

**JUDGE**

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

**Court Assistant - Felix**

**Petitioners/Respondents - N/A**

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

**Objector/Applicant - Mr Oboso/Mr Wason**

**For Objector/Applicant - N/A**