



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 95 OF 2015

IN THE MATTER OF THE ESTATE OF ELISHA OKEA OGOLA (DECEASED)

between

WILLIAM OUKO OGOLA.....APPLICANT

VERSUS

1. FLORENCE MURUNGA OKEA

2. ALLOYCE OBUNGA OKEA.....PETITIONERS/RESPONDENTS

and

1. ABDINELI ADAN KALICHA

2. MOHAMMED KHEIR ISAAK ABDULLAHI.....INTERESTED PARTIES

RULING NO.1

1. A Grant of Letters of Administration Intestate for the Estate of **Elisha Okea Ogola** (deceased) was issued to **Florence Murunga Okea** and **Alloyce Obunga Okea** on 22/06/2015. The Grant was confirmed on 11/03/2016 and a Certificate of Confirmation issued. The said Certificate was rectified on 07/04/2016 and a fresh Certificate of Confirmation issued.

2. On 09/08/2016, **Job Oginga Ogola** (hereinafter referred to as '**Job**') filed a Summons for Revocation of the Grant dated 08/08/2016 (hereinafter referred to as '**the Summons**'). The Summons was served and directions taken where it was proposed by the parties and conceded to by the Court that the Summons be heard by way of oral evidence. As the hearing was midway, **William Ouko Ogola** (hereinafter referred to as '**the Applicant**') filed a Notice of Motion dated 19/04/2018 (hereinafter referred to as '**the Motion**') seeking the following orders: -

1. That the grant of letters of Administration issued to FLORENCE MURUNGA OKEA & ALOYCE OBUNGA OKEA and confirmed on 7th April, 2016 be altered by removing / deleting from the scheduled of properties thereof

a) Plot No. 24 Migori Town.

b) LR No. Suna East / Wasweta 1 / 513

2. That this Honourable Court do further find that the above mentioned properties do not form part of the estate of deceased Elisha Okea Ogola.

3. That costs of this application be borne by the two administrators.

3. Directions were taken and it was proposed by the parties and conceded to by the Court that the hearing of the Summons be stayed and that the Motion be instead heard and determined. The Motion was to be heard by way of written submissions.

4. Parties filed their respective responses to the Motion. The Petitioners/Respondents and the Interested Parties opposed the Motion vide a Replying Affidavit sworn by **Florence Murunga Okea** on 04/05/2018 and filed on 15/05/2018. **George Loch Mboya Ogola** (hereinafter referred to as '**George**') supported the Motion. He filed a Further Affidavit sworn on 16/07/2018 on 18/07/2018. The Applicant filed his

written submissions through **Messrs. Kerario Marwa and Company Advocates** whereas the Petitioners/Respondents and the Interested Parties filed their written submissions through **Messrs. Oguttu, Ochwangi, Ochwal and Company Advocates**. **Messrs. S. M. Sagwe and Company Advocates** filed written submissions on behalf of Job. George appeared in person and filed his own submissions.

5. The gist of the Motion was that the properties known as **Plot No. 24 Migori Town** and **Suna East/Waseta 1/513** did not form part of the estate of the deceased herein and should be removed from the Schedule of Properties thereof. The Applicant, Job and George relied on the Court of Appeal decision in **Kisumu Civil Appeal No. 199 of 2001 George Loch Mboya Ogola vs. Elisha Okea & Town Council of Migori** in support of the submission.

6. The Petitioners narrated the background of the matter and contended that indeed the said two properties formed part of the **Estate of Daniel Ogola Sigera alias Loch Ogola** which estate was duly administered and the properties lawfully devolved to the deceased herein hence forming part of the estate of the deceased herein and not otherwise.

7. I have carefully considered the Motion, the Responses thereto, the submissions and the decisions referred to. From the record I gather that **Daniel Ogola Sigera alias Loch Ogola** died on 24/01/1982 at Kericho District Hospital. One **Elisha Okea Ogola** who is the deceased in this cause and whose estate is being administered herein petitioned for the administration of the estate of Daniel Ogola Sigera *alias* Loch Ogola vide **Migori Principal Magistrate's Court Succession Cause No. 14 of 1994** and a Grant was made to him on 03/03/1995. That Grant was confirmed on 14/03/1995 and a Certificate of Confirmation accordingly issued. The Certificate was exhibited as '**FMO-1**' in the Replying Affidavit of Florence Murunga Okea. The Certificate listed the two properties in issue herein as part of the properties of the late Daniel Ogola Sigera *alias* Loch Ogola and upon confirmation of the Grant, the said two properties, among others that formed the Estate of Daniel Ogola Sigera *alias* Loch Ogola, wholly devolved to Elisha Okea Ogola, the deceased herein. The properties were duly transferred and registered in the name of Elisha Okea Ogola, the deceased herein.

8. Elisha Okea Ogola died on 29/03/2013 and the Petitioners petitioned for the administration of his estate in this cause. Among the properties the Petitioners listed as those of the deceased herein were the two properties subject of the Motion. The Petitioners contended that upon the confirmation of the Grant herein the properties devolved as ordered by this Court and that the parcel of land known as **Suna East/Waseta 1/513** was sub-divided hence it is non-existent to be a basis of the Motion.

9. I have perused the decision in **Kisumu Civil Appeal No. 199 of 2001** (supra). The Court found that Plot No. 24 Migori Town '*... remain the property of Loch Ogola (deceased) the registered owner and comprise part of his estate...*' The decision was rendered on 08/05/2009. By that time Loch Ogola had long died and even his estate fully administered in 1995. It is however true that Plot No. 24 Migori Town as well as Suna East/Waseta 1/513 formed part of the estate of Daniel Ogola Sigera *alias* Loch Ogola. The said properties were duly dealt with in **Migori Principal Magistrate's Court Succession Cause No. 14 of 1994** which Cause was on the administration of the Estate of the said Daniel Ogola Sigera *alias* Loch Ogola. Whereas the Court of Appeal was right in holding that Plot No. 24 Migori Town formed part of the estate of Loch Ogola I believe that my Lordships were not informed that indeed the said property had already been duly dealt with as such under **Migori Principal Magistrate's Court Succession Cause No. 14 of 1994**.

10. A closer look at the dispute in this Cause has to do with how **Migori Principal Magistrate's Court Succession Cause No. 14 of 1994** was administered. I say so because the Applicant, Job and George vehemently believe that the estate of Daniel Ogola Sigera *alias* Loch Ogola who was their father still remain unadministered and that the two properties in issue ought to revert back to that estate. However, the correct position is that the estate was duly dealt with in law and if the Applicant, Job and George are intent on challenging that administration then such proceedings ought to be taken in the right matter and not in this Cause.

11. The Motion was otherwise overtaken by events. It is for rejection since it has nothing meaningful to add in this Cause. The upshot is that the Notice of Motion dated 19/04/2018 be and is hereby dismissed with costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 4th day of April 2019.

A. C. MRIMA

JUDGE

Ruling delivered in open Court and in the presence of:

Mr. Kerario Marwa Counsel instructed by Messrs. Kerario Marwa & Company Advocates for the Applicant.

Mr. Oguttu-Mboya Counsel instructed by Messrs. Oguttu, Ochwangi, Ochwal and Company Advocates for the Petitioners.

Mr. Sagwe Counsel instructed by Messrs. S. M. Sagwe and Company Advocates for Job Oginga Ogola.

George Loch Mboya Ogola in person.

Evelyne Nyauke – Court Assistant