



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
(CORAM: CHERERE-J)
SUCCESSION CAUSE NO. 103 OF 2014
IN THE MATTER OF THE ESTATE OF PIUS OYIEKO
AGOLA alias PIUS OYIEKO (DECEASED)

BETWEEN

RISPER ARUM AKUMU.....PETITIONER/RESPONDENT

AND

SHEM OKORE.....OBJECTOR/APPLICANT

AND

ANNA AKUMU OGIM.....1ST INTERESTED PARTY

TOM MBOYA AYUGI.....2ND INTERESTED PARTY

JUDGMENT

Introduction

1. **PIUS OYIEKO AGOLA alias PIUS OYIEKO (hereinafter referred to as deceased)** died sometimes on 5th July, 1996. Deceased's estate comprises of Land Parcel No. **KISUMU/WEST KOGUTA/3023**.

2. Letters of administration were issued to **RISPER ARUM AKUMU, (hereinafter referred to as Petitioner/Respondent)**.

Applications

3. Prior to confirmation of the grant, **SHEM OKORE (hereinafter referred to as Objector/Applicant)** moved the court by a notice of motion dated 4th August, 2014 and filed on 9th August, 2016, seeking revocation of the Letters of Administration on the grounds that:

i. The **Petitioner/Respondent** obtained the Letters of Administration without consulting the brothers of the deceased

ii. The **Petitioner/Respondent** was in the process of disposing off the estate

4. Subsequently, **ANNA AKUMU OGIM (hereinafter referred to as the 1st Interested Party)** on 12th February, 2015, filed a notice of motion dated 11th February, 2015 claiming interest to the estate in in her capacity as sister to the deceased.

Objector/Applicants' Case

5. In explaining his relationship with the deceased, the Objector stated that his late father Agola Okere had 4 wives. He stated that he was from the 2nd wife's house; the deceased and the 1st **Interested Party** from the 1st wife's house whereas the **Petitioner/Respondent** was wife

to deceased's brother Daniel Arum. It was his evidence that the deceased and his late wife Maritha Omollo were not blessed with children and that after deceased was predeceased by his wife; he took up the responsibility of caring for the deceased until he died. He urged that the estate be distributed to the deceased's sister, the **1st Interested Party** herein, himself and other step brothers.

6. The Objector's witnesses **PW2 ELIJAH ODHIAMBO AGOLA** and **PW3 JORAM OTIENO AGOLA** said they are step-brothers of deceased entitled to the deceased's estate.

Petitioners' Case

7. **RISPER ARUM AKUMU**, the **Petitioner/Respondent** herein conceded that deceased and his wife were not blessed with children and that he was survived by his sister the **1st Interested Party** and herself in her capacity as wife to deceased's brother Daniel Arum. She stated that she took care of the deceased until he died and urged the court to find that entitled to his estate which she had already sold off to the **2nd Interested Party**. It was also her evidence that deceased had two other siblings who were deceased.

8. **ANNA AKUMU OGIM** the **1st Interested Party** and sister to the deceased supported the Petitioner's case that she took care of the deceased until he died and was therefore entitled to his estate. She stated that her siblings who included the deceased, Petitioner's husband and Wilkister were all deceased. **DW3 SAMUEL AOKO AGOLA** objector's brother similarly supported the Petitioner's case and urged that the objection be dismissed.

2ND Interested Party's Case

9. **TOM MBOYA AYUGI**, the **2nd Interested Party** stated that he bought deceased's land from the **Petitioner/Respondent** and title was issued to him on 23rd July, 2015. He produced a copy of the registration register which shows that the land was subsequently transferred to **Jared Nyaguti** on 29th September, 2016 and to **Mifely Enterprises Ltd** on 7th November, 2016.

Analysis and Determination

10. I have considered the evidence on record and I have deduced the following issues for determination.

i. Whether the Letters of Administration and Grant should be revoked

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

11. Section 76 of the **Law of Succession Act** (hereinafter referred to as *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.”

12. **Section 66 of 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

13. From the evidence on record, it is not disputed that the deceased and his late wife were not blessed with children. The deceased was survived by his sister **Anna Akumu Ogim** the **1st Interested Party**; his brother's wife the **Petitioner/Respondent** and several step-siblings who include the **Objector/Applicant**; **PW2 Elijah Odhiambo Agola**; **PW3 Joram Otieno Agola** and **DW3 Samuel Aoko Agola** among others.

14. Section 39 of *the Act* provides that:

(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.

15. As stated hereinabove, there is evidence that **Deceased's** spouse and parents are deceased. The next in line are his brothers and sister and the only one surviving is **ANNA AKUMU OGIM** the **1st Interested Party** and she is the one entitled to the deceased's estate.

16. The **Objector/Applicant**; **PW2 Elijah Odhiambo Agola**; **PW3 Joram Otieno Agola** and **DW3 Samuel Aoko Agola** among others step-siblings are 6th in line of deceased's relatives and do not rank in priority to the **1st Interested Party**. Consequently, I find that the **Objector's** claim cannot be maintained. (See **In re Estate of John Gakunga Njoroge (Deceased) [2015] eKLR**).

17. Coming back to the **Petitioner/Respondent**, her claim as wife to deceased's brother ranks in priority to the objector but not in priority to that of deceased's sister the **1st Interested Party** herein. From her testimony however, the **1st Interested Party** has renounced her claim in favor of the **Petitioner/Respondent**.

18. The renunciation by the **1st Interested Party** has worked favourably for the **2nd Interested Party** and subsequent purchasers of deceased's land. This is for the reason the sale and transfer of deceased's land effected prior to the confirmation of the grant would lawfully call for cancellation but such cancellation would in view of the renunciation not be in the interest of justice.

19. Having said that, the objection fails with costs to the **Petitioner/Respondent** and the **Interested Parties**.

DELIVERED AND SIGNED AT KISUMU THIS 16th DAY OF May 2019

T. W. CHERERE

JUDGE

READ IN OPEN COURT IN THE PRESENCE OF-

Court Assistant - Felix

Petitioner/Respondent - Present

For Petitioner/Respondent - N/A

Objector/Applicant - Present

1st Interested Party - Present

2nd Interested Party - Present