



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO. 654 OF 2015

IN THE MATTER OF THE ESTATE OF SAMUEL DAN OCHUNG

***Alias* SAMUEL OCHIENG RAMBIN.....DECEASED**

AND

IN THE MATTER OF A PETITION BY:

ANDREW ROBERT OCHUNG.....APPLICANT

RULING

The deceased, **SAMUEL DAN OCHUNG**, who was also known as **SAMUEL OCHIENG RAMBIM**, died intestate on 18th August 1999. However, it was not until 2015 that his son, **ANDREW ROBERT OCHUNG**, lodged this Succession Cause in court.

1. In his supporting affidavit Andrew named himself, **PAMELA ATIENO WANJARE** and **ANNE AKINYI OMUGO** as the only surviving

beneficiaries.

2. Shortly thereafter, **TERRY MAUREEN OCHUNG** filed Summons for the annulment of the Grant that had been issued to Andrew. The basis for the said Summons was that Andrew had failed to name the following persons who were also beneficiaries;

(i) CATHERINE OCHUNG;

(ii) ANGELA OCHUNG;

(iii) ELIZABETH OCHUNG;

(iv) TERRY M. OCHUNG;

(v) GEORGE F. OTIENO; and

(vi) PERPETUA A. OCHUNG

3. Instead of proceeding with the application for the annulment of the Grant, the parties decided that it was better to explore an amicable resolution on the issue concerning the distribution of the Estate.

4. However, **MAURICE OTIENO OCHUNG** then filed an Affidavit of Protest indicating that the deceased had two households.

5. It is common ground that the deceased married **TERESA OKUKU**, and that that union was blessed with children.

6. Maurice Otieno has named eight persons as being products of the union between Samuel and Teresa. The said 8 persons are:

(1) Beatrice Adhiambo;

(2) Margaret Ogutu;

(3) Maurice Otieno;

(4) Wilfred Odhiambo;

(5) Argwings Onyango;

(6) Susan Atieno;

(7) Andrew Onyango; and

(8) James John Onyango

7. However, Terry Maureen Ochung stated that five of those persons were not the offspring of the deceased, Samuel. The said 5 persons are Wilfred, Argwings, Susan, Andrew and James.

8. Meanwhile, the deceased got the following children, with his wife **PERES DOLLY AWINO**;

(1) Fredrick Odhiambo;

(2) Angela Ochung;

(3) Elizabeth Apondi;

(4) Andrew Robert Ochung;

(5) Terry Maureen Ochung;

(6) George Francho Ochieng;

(7) Perpetua Amondi;

(8) Catherine Ochung; and

(9) Scholastica Ochung

9. Having re-evaluated the evidence on record, I find that it is only three children who Teresa got with Samuel.

10. I further find that the marriage between Teresa and Samuel broke down irretrievably, and that Teresa re-married thereafter.

11. After the marriage had broken down, Samuel married Peres Dolly Awino.

12. All the eight children of the union between Samuel and Peres are

beneficiaries of the Estate of Samuel.

13. However, the children who Teresa got after she had got married to a man other than Samuel, are not the beneficiaries of Samuel.

14. Indeed, it is a misnomer to refer to those children as being a part of the “*first family*”, when their father is not Samuel.

15. The fact that Teresa was the mother of those five children did not make them the offspring of Samuel.

16. I appreciate the fact that whilst the issue of dependency is normally

directly correlated with parentage, it is also possible that a person may prove that he or she was a dependant (and thus a beneficiary) even if he or she was not a biological child of a deceased person.

17. However, when a person asserts that he or she was a beneficiary, yet he or she was not the biological child of the deceased, the said person must adduce evidence to satisfy the court about the said assertion.

18. In this case, there was no evidence provided to the court, to prove that Wilfred, Argwings, Susan, Andrew and James were beneficiaries of the estate of Samuel.

19. Fredrick Odhiambo, Scholastica Ochung and Beatrice Adhiambo are

deceased.

20. In effect, it is two of Teresa's children (who she got with Samuel), that survived the deceased.

21. And, seven of the children of Peres also survived the deceased.

22. I find that there are three properties which constitute the Estate of

Samuel. I so find because it is only the following 3 properties whose

Certificates of Official Search reveal that they are registered in the name of the deceased;

(a) KISUMU/KAPUONJA/2174;

(b) KISUMU/KAPUONJA/1703; and

(c) KISUMU/KAPUONJA/1705

23. If the parcel of Land **KISUMU/KOGONY/1354** was transferred, fraudulently or otherwise, it cannot be a part of the property which was available for distribution to the beneficiaries.

24. In the event that the Petitioner or any other person is convinced that the transfer was fraudulent, there will be need for Petitioner to undertake such proceedings as would result in the title reverting to the Estate.

25. In the circumstances, as there is yet no clarity about the ownership of **KISUMU/KOGONY/1354** and **KISUMU/KAPUONJA/889**, the Court finds itself unable to distribute the Estate immediately.

26. I will allow the beneficiaries an opportunity to lead more evidence on the issue concerning the ownership of those 2 parcels of land, before I can make the final orders on distribution.

DATED, SIGNED and DELIVERED at KISUMU This 9th day of July 2019

FRED A. OCHIENG

JUDGE